Supreme Court, U.S.
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No. 01-

IN THE

PROFESSIONAL TRAVEL CORPORATION,

Petitioner,

v.

TOMESENE BLAKE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the court of appeals err in reversing the trial court's dismissal of the case on forum non conveniens where the court of appeals did not find that the trial court failed to consider or misapplied the *Gulf Oil* factors, but instead simply substituted its judgment for that of the trial court?

2. Where the Plaintiff chooses a forum (the District of Columbia) to litigate an employment discrimination case in which neither she nor the employer Defendant are residents, and where the trial court found that the *Gulf Oil* private and public factors weigh in favor of her place of employment (Virginia) as the more convenient forum, did the court of appeals err in reversing the trial court's dismissal of the civil action because the Defendants had not shown that the District of Columbia is a "seriously inconvenient forum"?

3. Did the court of appeals err in finding that the Plaintiff would experience a "serious risk of inconvenience" by not being able to litigate her claim in a District of Columbia court under the District of Columbia Human Rights Act because it was uncertain whether a Virginia court would entertain her District of Columbia Human Rights Act claim?

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

Sarah K. Boswell, a defendant below, is being served as a Respondent herein.

Petitioner Professional Travel Corporation is a wholly owned subsidiary of Navigant International, Inc.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties to the Proceeding and Statement Pursuant to Rule 29.6	ii
Table of Contents	iii
Table of Cited Authorities	v
Table of Appendices	vii
Opinions Below	1
Statement of Jurisdiction	1
Statutory Provisions Involved	1
Statement of the Case	2
A. Proceedings Below	2
Facts Alleged in the Complaint and Affidavits	2
The Superior Court's and Court of Appeals' Decisions	7
A. The Superior Court's Decisions	7
B. The District of Columbia Court of Appeals' Decision	10

Contents

	Page
Reasons for Granting the Writ	12
I. The Court of Appeals Erred In Reversing The Trial Court's Dismissal Of The Case Where The Court of Appeals Did Not Find The Trial Court Had Misapplied The *Gulf Oil v. Gilbert* Factors But Simply Substituted Its Judgment For That Of The Trial Court Concerning The Weight To Be Given Certain Factors	13
II. The Court of Appeals Applied The Wrong Law In Overturning the Trial Court	19
III. The Court of Appeals Incorrectly Relied On The Uncertainty Whether Blake Would Be Able Fully To Litigate Her Claims In A Virginia Court To Find That Litigating The Case In Virginia Would Pose A Serious Risk Of Inconvenience.	20
Conclusion	22

TABLE OF CITED AUTHORITIES

Page

Cases:

Coulibaly v. Malaquias, 728 A.2d 595 (D.C. 1999) 13, 14

Cresta v. The Neurology Ctr, P.A., 557 A.2d 156 (D.C. 1989) 17

Faragher v. City of Boca Raton, 524 U.S. 775 (1998) 20

Fisher v. United States, 328 U.S. 463 (1946) 13

General Motors Corp. v. District of Columbia, 380 U.S. 553 (1965) 13

Gonzales v. Atchison T. & S. F. Ry. Co., 189 Kan. 689 (1962) 12, 13

Gore v. United States Steel Corp. 15 N.J. 301, 104 A.2d 670, *cert. denied*, 348 U.S. 861 (1954) ... 13

Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947) .. *passim*

Jimmerson v. Kaiser Found., 663 A.2d 540 (D.C. 1995) 15, 16

McCracken v. Eli Lilly & Co., 494 N.E.2d 1289 (Ind. Ct. App. 1986) 12

Cited Authorities

	Page
Mills v. Aetna Fire Underwriters Ins. Co., 511 A.2d 8 (D.C. 1986)	16, 21
Norfolk and Western Ry. Co. v. Williams, 239 Va. 390 (1990)	19
Pernell v. Southall Realty, 416 U.S. 363 (1974)	1
Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981)	13, 14, 16, 17, 18, 20, 21
Rini v. New York Cent. R.R. Co., 429 Pa. 235, 240 A.2d 372 (1968)	13
Statutes:	
28 U.S.C. § 1257(a)	1
42 U.S.C. § 2000-e, *et seq.*	10
42 U.S.C.§ 2000e-5(f)(5)	19
D.C. Code §§ 1-250, *et seq.*	6
D.C. Code § 13-425	1, 7
Rules:	
Fed. R. Civ. P. 45(b)(2)	19
Super. Ct. R. 12(b)(1)	7, 8
Super. Ct. R. 12(b)(6)	7, 8

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The District Of Columbia Court Of Appeals Dated, Decided And Filed March 8, 2001 ..... 1a

Appendix B — Transcript Of Hearing Of The Superior Court Of The District Of Columbia, Civil Division Dated October 29, 1999 ..... 15a

Appendix C — Memorandum Opinion And Order Of The Superior Court Of The District Of Columbia, Civil Division Dated October 27, 1999 ..... 30a

Appendix D — Order Of The District Of Columbia Court Of Appeals Denying Petition For Rehearing Dated August 2, 2001 ..... 39a

Appendix E — Complaint Dated And Filed July 23, 1999 ..... 40a

Appendix F — Affidavit Of Lynnette J. Heiges Dated August 26, 1999 ..... 65a

Appendix G — Affidavit Of Tomsene Blake Dated September 7, 1999 ..... 72a

Appendix H — Affidavit Of Thomas Moreland Dated September 3, 1999 ..... 82a

Professional Travel Corporation ("Professional Travel"), respectfully petitions for a writ of certiorari to review the judgment of the District of Columbia court of appeals in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. *infra* 1a-14a) is reported at 768 A.2d 568 (D.C. 2001). The opinion of the superior court of the District of Columbia is unreported (App. *infra* 30a-38a).

STATEMENT OF JURISDICTION

The court of appeals' order sought to be reviewed was entered on March 8, 2001 and a timely petition for rehearing was denied on August 2, 2001. (App. *infra* 39a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). *See Pernell v. Southall Realty*, 416 U.S. 363, 368-69 (1974).

STATUTORY PROVISIONS INVOLVED

District of Columbia Code Section 13-425 provides that:

> When any District of Columbia court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss such civil action in whole or in part on any conditions that may be just.

STATEMENT OF THE CASE

A. Proceedings Below

On July 23, 1999, Blake, a resident of Maryland, filed a complaint in the superior court of the District of Columbia against her employer, Professional Travel, and her supervisor, Sarah Boswell, alleging she had been discriminated against and harassed in violation of the District of Columbia Human Rights Act. (App. *infra* 40a-64a).

On October 27, 1999, the superior court granted Professional Travel's motion to dismiss on *forum non conveniens* grounds, finding that Arlington, Virginia, where Professional Travel is located and Blake worked, was the more convenient forum. (App. *infra* 30a-38a) Thereafter, on October 29, 1999, the superior court held a hearing to confirm that Blake could seek relief in Virginia. (App. *infra* 15a-29a).

In its March 8, 2000, decision the District of Columbia court of appeals reversed the judgment of the superior court. (App. *infra* 14a). The court of appeals denied Professional Travel's petition for rehearing and rehearing en banc on August 2, 2001. (App. *infra* 39a).

FACTS ALLEGED IN THE COMPLAINT AND AFFIDAVITS[1]

Blake, a Maryland resident, was an employee of Professional Travel, a travel agency. (Compl. ¶2, 10; App. *infra* 41a, 42a-43a). Blake worked and was based at

1. For purposes of the forum non conveniens motion the following factual allegations were accepted as true.

Professional Travel's east coast regional headquarters in Arlington, Virginia. (Compl. ¶ 10; Heiges Aff. ¶ 7; App. *infra* 42a-43a, 67a).

Neither Professional Travel nor its parent, Navigant International, Inc., a Colorado corporation, owns or leases real estate in the District of Columbia or maintains an office in the District of Columbia apart from on-site offices that are located within some client facilities. (Superior Court Memorandum Opinion and Order of October 27, 1999 at 2 [hereinafter, "Mem. Op."]; Compl. ¶ 5; Heiges Aff. ¶ 5; App. *infra* 31a, 42a, 66a). Of Professional Travel's approximately 50 east coast employees, all are based at Professional Travel's Arlington headquarters and the vast majority work exclusively in Virginia and have no work contacts with the District of Columbia. (Heiges Aff. ¶¶ 7-9, 11; App. *infra* 67a-68a).

Blake worked as a senior travel counselor at Professional Travel's Arlington, Virginia office during the relevant time period. (Heiges Aff. ¶ 10; App. *infra* 67a). Her job duties involved assisting travelers calling in to the Arlington office and periodically traveling on-site to corporate clients, including Microstrategy, SAGA Software, Inc., and the National Science Foundation, all of whom are located in Virginia. (Heiges Aff. ¶¶ 11-12; App. *infra* 67a-68a). Blake's facsimile, computer e-mail, business telephone, and voice mail were all located at Professional Travel's Arlington, Virginia offices. (*Id.* ¶ 15; App. *infra* 69a). In July 1998, Blake became the primary designated travel agent for the Federation of State Boards of Physical Therapy, located in Alexandria, Virginia. (Compl. ¶ 13; Heiges Aff. ¶ 14(f); App. *infra* 43a, 69a).

Defendant Sarah Boswell ("Boswell"), a District of Columbia resident, was director of operations for Professional Travel in its Arlington office and Blake's supervisor. (Compl. ¶ 15; App. *infra* 43a). Professional Travel Vice President Phyllis Reagan, Professional Travel's top corporate official in the Arlington office, also directed Blake's work in the Arlington office. (*Id.* ¶ 21; App. *infra* 44a). Blake's personnel files, payroll records and other documents are located either in Arlington, Virginia or in Englewood, Colorado. (Heiges Aff. ¶ 15; App. *infra* 69a).

Thirteen paragraphs of Blake's complaint are devoted to Reagan's sexual harassment of Blake in Virginia. (Compl. ¶¶ 23-35, App. *infra* 44a-47a). Blake's complaint alleges, for example, that, after a Sunday lunch together, Reagan and Blake went to Professional Travel's Arlington office where Reagan kissed Blake in a "sexual manner." (*Id.* ¶¶ 29-32; App. *infra* 45a-46a). Reagan again kissed Blake at the office door in a "sexual manner" and indicated her "sexual desire" for Blake. (*Id.* ¶¶ 33-34; App. *infra* 46a). Reagan then told Blake she would stop kissing her because it was the first date between them. (*Id.* at ¶ 34; App. *infra* 46a).

The complaint also alleges that between July 27, 1998, and June 30, 1999, Blake was subject to verbal harassment and abuse from Boswell in a "series of personal conversations and phone calls at Professional Travel's offices in Arlington, Virginia, as well as at ... [Blake's] home" in Maryland. (Compl. ¶ 52; App. *infra* 49a). These communications included Boswell's demands for sexual favors tied to threats concerning Blake's employment status and promises of preferential treatment. (*Id.* ¶¶ 53-61; App. *infra* 49a-51a).

Blake's complaint alleges that in the Winter of 1998-1999 four management-level positions became available at Professional Travel: (1) an on-site manager position at the National Science Foundation in Virginia; (2) an on-site manager position at the law firm of Hogan & Hartson in Washington, DC; (3) an on-site manager position at the law firm of Skadden, Arps, Slate, Meagher & Flom in Washington, DC; and (4) an account manager position at Professional Travel's Arlington, Virginia office. (Compl. ¶ 44; App. *infra* 48a). According to her complaint, Blake applied to Boswell just for the positions at the National Science Foundation in Virginia and the account representative job at Professional Travel's Arlington office. (*Id.* ¶ 45; App. *infra* 48a).

Blake alleges that she and Boswell met for lunch on February 20, 1999, at a District of Columbia restaurant to discuss these Virginia-based job openings.[2] (Compl. ¶ 47; App. *infra* 48a). According to Blake's complaint, after lunch there followed an unwelcomed sexual encounter at Defendant Boswell's home in the District of Columbia during which Blake pushed Boswell off her person. (*Id.* ¶¶ 49-50; App. *infra* 49a). Blake also alleged that Boswell attempted to force herself sexually upon Blake one day while Blake was visiting at Boswell's District of Columbia home. (*Id.* ¶ 49-50; App. *infra* 49a). Blake was thereafter denied

2. After Defendants filed their motion to dismiss, Blake filed a lengthy affidavit in which she averred that at the February 20, 1999 lunch Blake and Boswell discussed the Hogan & Hartson and Skadden Arps vacancies in the District of Columbia. (Blake Aff. ¶ 9; App. *infra* 75a). The court of appeals took this to mean that Blake had actually "applied for" the positions at the two District of Columbia law firms. (App. *infra* 3a). Blake's complaint, however, is to the contrary. (*See* Compl. ¶¶ 44-45; App. *infra* 48a).

both of the Virginia-based promotions. (*Id.* ¶ 51; App. *infra* 49a). The decisions concerning these vacancies in Virginia were made by persons located in Professional Travel's Arlington office. (Heiges Aff. ¶ 17; App. *infra* 70a).

On June 1, 1999, Blake told Defendant Boswell that she did not want to have a sexual relationship with Boswell. (Compl. ¶ 62; App. *infra* 51a-52a).

On June 30, 1999, Blake was discharged by Boswell at a meeting in Arlington, Virginia attended by Boswell, Reagan and Lynette Heiges, the Human Resources Representative for Professional Travel in Arlington. (Compl. at ¶ 65; App. *infra* 52a). Blake's discharge occurred less than one week after Professional Travel lost the account of the Virginia-based Federation of State Boards of Physical Therapy for which Blake had been principally responsible. (*Id.* at ¶¶ 13, 63-65; App. *infra* 43a, 52a). Blake's complaint alleges that, at the June 30 meeting, Reagan could not locate an earlier letter putting Blake on probation. (*Id.* ¶¶ 72-73; App. *infra* 53a-54a). Reagan told Blake to go home and wait to hear from Reagan further. (*Id.* ¶ 73; App. *infra* 54a). Thereafter, on July 6, 1999, Reagan left a voice message on Blake's home answering machine stating Reagan was going to abide by Boswell's decision to discharge Blake. (*Id.* ¶ 76; App. *infra* 54a).

Blake's principal sexual harassment claim under the District of Columbia Human Rights Act,[3] outlined in Count I of her complaint, alleges that Defendant Boswell denied Blake a managerial level position in retaliation for Blake's refusal to engage in sexual acts with Boswell and that the

3. D.C. Code §§ 1-250, *et seq.*

Defendants wrongfully terminated Blake for her refusal to comply with Boswell's and/or Reagan's demands for sexual favors. (Compl. at ¶ 80; App. *infra* 55a). Count III of the complaint, denominated "Retaliation," alleges essentially the same misconduct. (*Id.* at ¶¶ 88-94; App. *infra* 58a-60a). Count II of the complaint alleges a hostile work environment. (*Id.* ¶¶ 83-87; App. *infra* 57a-58a). Count IV of the complaint alleges intentional infliction of emotional distress and Count V alleges intentional interference with prospective economic advantage. (*Id.* ¶¶ 95-110; App. *infra* 60a-63a).

In Counts I-IV, Blake does not seek separate relief from Boswell apart from Professional Travel. (Compl. ¶¶ 82, 87, 94, 104; App. *infra* 56a, 58a, 59a-60a, 63a). In Count V (intentional interference with prospective economic advantage), Blake seeks relief against Boswell individually. (*Id.* ¶ 110; App. *infra* 63a).

Reagan is not named as a defendant in Blake's complaint.

THE SUPERIOR COURT'S AND COURT OF APPEALS' DECISIONS

A. The Superior Court's Decisions

Professional Travel moved pursuant to Rules 12(b)(1) and (6) of the Superior Court Rules of Civil Procedure (failure to state a claim) and D.C. Code § 13-425 (inconvenient forum) to dismiss Blake's complaint in its entirety. (Mem. Op. at p. 1; App. *infra* 30a). Prior to ruling on the motion, the superior court accepted affidavits from the parties concerning the location and nature of Blake's employment and the alleged wrongful acts. (*Id.* at p. 3; App. *infra* 32a-33a).

In its Memorandum Opinion and Order, the superior court found that the District of Columbia was not a convenient forum for this case. (*Id.* at pp. 5-8; App. *infra* 35a-38a).[4] The trial court observed that Blake, a Maryland resident, was not entitled to the same degree of deference in her choice of forum as would a District of Columbia resident. (*Id.* at p. 8; App. *infra* 37a).

The superior court's opinion examined the "private" and "public" interest factors outlined in this Court's decision in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), and adopted by the District of Columbia court of appeals. (Mem. Op. at pp. 6-8; App. *infra* 35a-37a). First considering the private interest factors, the superior court found that: (1) most of the documentary evidence and sources of proof can be found only at Professional Travel's Arlington headquarters; (2) compulsory process would likely involve mostly Virginia witnesses and witnesses who work primarily at the Arlington office; and (3) it would be easier and slightly less costly for witnesses to attend a local trial in Arlington than if the case were heard in the District of Columbia. Thus, it would be easier for witnesses working at Professional Travel's Arlington office to remain on call if the proceedings took place in Arlington than in the District of Columbia. (*Id.* at p. 6; App. *infra* 35a-36a). The superior court observed that "in terms of ease, expense and expedience," Virginia is a more convenient forum "and plaintiff does not argue to the contrary." (*Id.* at p. 7; App. *infra* 36a). Accordingly, the superior court concluded that the private interest factors "militate strongly" in favor of Virginia as the more convenient forum. (*Id.* at p. 6; App. *infra* 35a).

4. The superior court first denied Professional Travel's motion to dismiss the counts under Rules 12(b)(1) and (6), Super. Ct. R. Civ. P. on the grounds that the court did not have subject matter jurisdiction. (Mem. Op. at pp. 2-5; App. *infra* 32a-35a).

The superior court then considered the *Gulf Oil* public interest factors and found that "Virginia has the closer ties to this litigation." (Mem. Op. at p. 7; App. *infra* 36a-37a). The superior court observed that while some of the alleged sexual assaults occurred in the District of Columbia, others occurred in Virginia. (*Id*. at p. 7; App. *infra* 36a). The superior court found that the employment discrimination that allegedly emanated from these events consisted of Boswell's alleged harassment, threats, and repeated demands for sexual favors that occurred while Boswell was at work in Virginia and from Boswell's home in the District of Columbia. (*Id.* at p.7; App. *infra* 36a-37a). The superior court noted, however, that the *impact* of the alleged harassment, including Blake's termination and the Defendants' failure to promote her, was alleged to have affected Blake on her job, primarily in Virginia. (*Id.*). The superior court also noted that: (1) Blake never argued that Virginia was inconvenient for her; (2) Professional Travel's presence in the District of Columbia was limited relative to its presence in Virginia; (3) Blake's Virginia employment relationship with Professional Travel was governed by Virginia law; (4) the decisions not to promote Blake and to terminate her were made in Virginia; and (5) Virginia has a local interest in resolving the dispute since Professional Travel has a significant Arlington, Virginia presence. (*Id.* pp. 7-8; App. *infra* 37a). Concluding that the balance of factors "strongly favors" resolution of this dispute in Virginia, the superior court dismissed Blake's complaint with prejudice. (*Id.* p. 8; App. *infra* 37a).

Seeking to assure itself that Blake would have a viable alternative forum in Virginia, the superior court *sua sponte* held a hearing on that question. At the October 29, 1999 hearing, counsel for Blake stated that, if Blake filed a claim in Virginia, she would seek redress under Title VII of the

Civil Rights Act of 1964.[5] (Tr. at pp. 3, 8; App. *infra* 17a, 23a). Blake indicated that she would also sue in Virginia for the common law torts of intentional infliction of emotional distress and intentional interference with contract, as well as for wrongful discharge in violation of public policy. (*Id.* at pp. 8-9; App. *infra* 23a). At the hearing, the superior court determined that Blake's basic claims would not be time barred in Virginia. (*Id.* at pp. 11-12; App. *infra* 25a-26a). The superior court also considered the question of whether Blake could obtain similar relief in Virginia. (*Id.* at pp. 13-14; App. *infra* 27a-28a). Finding that Blake had a viable alternative forum in Virginia, the superior court affirmed its dismissal of Blake's case with the proviso that, if Blake's ability to seek relief was cut off in Virginia, she could file for reconsideration with the District of Columbia superior court. (*Id.* at pp. 13-15; App. *infra* 27a-29a).

B. The District of Columbia Court of Appeals' Decision

The court of appeals reversed the superior court's judgment. (App. *infra* 14a). The court of appeals relied generally on the "close factual connection between the District of Columbia and the discriminatory acts alleged, together with the absence of any genuine showing of inconvenience to the defendants. . . ." (App. *infra* 1a-2a).

The court of appeals began its analysis by first considering the *Gulf Oil* public factors. (App. *infra* 10a-11a). The court of appeals faulted the trial court for focusing "largely on the 'impact' Boswell's action had on Blake's employment in Virginia. . . ." (App. *infra* 10a). This emphasis, said the court of appeals, "unduly truncated"

5. 42 U.S.C. § 2000-e, *et seq.*

Blake's hostile work environment claim and "diminished the weight of the contacts between Blake's suit and the District of Columbia." (*Id.*). The court of appeals observed that the District of Columbia's interest in enforcing its laws against job discrimination was at least as great as Virginia's. (*Id.*). The court of appeals concluded that none of the *Gulf Oil* public interest factors "warranted dismissal" of Blake's suit. (*Id.*).

The court of appeals also disagreed with the superior court's analysis of the *Gulf Oil* private factors. (App. *infra* 12a-13a). The court of appeals found that witnesses and evidence would be at least as available in the District of Columbia as in Arlington. (App. *infra* 12a). The court of appeals noted that, "arguably the two most important witnesses, Blake and Boswell, live in Maryland and the District of Columbia." (App. *infra* 12a n.7). The court of appeals observed that, while Virginia's subpoena authority stops at its borders, the District of Columbia superior court's subpoena authority extends 25 miles from the District of Columbia courthouse. (*Id.*). As to access to sources of proof, the court of appeals noted that there is no contention that the documents at Professional Travel's Arlington office are so numerous that there would be difficulty bringing them into the District of Columbia. (*Id.*).

The court of appeals also found that the most serious risk of inconvenience was to Blake because it was uncertain whether a Virginia court would entertain her District of Columbia Human Rights Act claim. (App. *infra* 13a). The court of appeals questioned whether Virginia was an adequate alternative forum because Blake could not sue Boswell individually in Virginia under Title VII of the

Civil Rights Act of 1964, and, unlike the District of Columbia Human Rights Act, Title VII contains a statutory cap on damages. (App. *infra* 13a-14a n.8).

The court of appeals found that the trial court had erred in finding Virginia to be the more convenient forum. (App. *infra* 9a). The superior court, said the court of appeals, applied an "erroneous standard." (App. *infra* 12a-13a). According to the court of appeals, the correct approach, where the public interest factors weigh in favor of retaining the case in the District of Columbia, is to determine whether the District of Columbia is a "*seriously inconvenient forum*." (Emphasis in original) (App. *infra* 39a).

Professional Travel's Petition for Rehearing, or in the alternative for rehearing *en banc*, was summarily denied. (App. *infra* 39a).

REASONS FOR GRANTING THE WRIT

Ignoring the approach required by its own precedents, which are based on this Court's decision in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), the District of Columbia court of appeals simply substituted its own judgment for that of the trial court as to the weight to be given various factors, without finding that the trial court in any way abused its discretion. In doing so, the court of appeals failed to follow the analysis required by *Gulf Oil*.

This case is important for three reasons: (1) because *Gulf Oil* has been adopted in many jurisdictions,[6] including the

6. *See, e.g., McCracken v. Eli Lilly & Co.*, 494 N.E.2d 1289 (Ind. Ct. App. 1986); *Gonzales v. Atchison T. & S. F. Ry. Co.*, (Cont'd)

District of Columbia, the persuasive effect of the court of appeals' erroneous analysis of the *Gulf Oil* factors extends beyond the borders of the District of Columbia (*see General Motors Corp. v. District of Columbia*, 380 U.S. 553, 556-57 (1965)); (2) the court of appeals' decision directly impacts on the potential jurisdiction of the Virginia courts and Virginia's interest in resolving a dispute involving a Virginia-based company and employees within its borders; and (3) this Court is concerned generally with the administration of justice in the District of Columbia and the proper relationship between the Congressionally-created trial and appellate courts (*see Fisher v. United States*, 328 U.S. 463, 490 (1946)). Accordingly, this Court should grant Professional Travel's petition for certiorari.

I. The Court of Appeals Erred In Reversing The Trial Court's Dismissal Of The Case Where The Court of Appeals Did Not Find The Trial Court Had Misapplied The No. 01 -.0I TDN-.HE_7 Factors But Simply Substituted Its Judgment For That Of The Trial Court Concerning The Weight To Be Given Certain Factors

A *forum non conveniens* determination is "committed to the sound discretion of the trial court" and may be reversed only when there has been "a clear abuse of discretion. . . ." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981); *Coulibaly v. Malaquias*, 728 A.2d 595, 601 (D.C. 1999). Where the trial court has analyzed the relevant *Gulf Oil* factors, and its balancing of these factors is reasonable,

(Cont'd)
189 Kan. 689 (1962); *Gore v. United States Steel Corp.* 15 N.J. 301, 104 A.2d 670, *cert. denied*, 348 U.S. 861 (1954); *Rini v. New York Cent. R.R. Co.*, 429 Pa. 235, 240 A.2d 372 (1968).

"its decision deserves substantial deference." *Piper Aircraft*, 454 U.S. at 257. As did the court of appeals in *Piper Aircraft*, the District of Columbia court of appeals here seems to have lost sight of the abuse-of-discretion standard, and substituted its own judgment for that of the trial court.

The District of Columbia court of appeals began its analysis by examining the *Gulf Oil* public interest factors first rather than initially considering the private interest factors. (App. *infra* 10a). The court of appeals' upside-down approach is contrary to the one adopted by this Court in both *Gulf Oil* and *Piper Aircraft*, which is to consider the private interest factors first. *See Gulf Oil*, 330 U.S. at 508; *Piper Aircraft*, 454 U.S. at 257-58. The private interest factors are the ones "likely to be most pressed" because they involve "important considerations" relating to the ease, expedition, and expense of the trial. *Gulf Oil*, 330 U.S. at 508. By addressing the public factors first, the court of appeals also ignored its own precedent, which requires the trial court initially to determine whether the private interest factors are in "equipose or near equipose. . . ." *See Coulibaly v. Malaquias*, 728 A.2d 595, 601 (D.C. 1999). Only where the private interest factors are in balance, or close to it, may the court proceed to review the public factors. (*Id.*).

Having started off on the wrong foot, the court of appeals proceeded in a way that was out of step with its limited authority to review the trial court's factual analysis for a clear abuse of discretion. Thus, the court of appeals emphasized that, in its view, the trial court improperly "focused largely on the 'impact' Boswell's actions had on Blake's employment. . . ." (App. *infra* 10a). This, said the court of appeals, diminished the weight of Blake's contacts with the District of Columbia. (*Id.*).

To the contrary, the trial court properly began its public factors analysis by observing that some of the precipitating events of sexual assault occurred in the District of Columbia. (App. *infra* 36a). The trial court went on to note, however, that other more significant and numerous events occurred in Professional Travel's Arlington, Virginia office. (App. *infra* 36a-37a). Most critically, the trial court considered the *impact* of the alleged workplace discrimination and retaliation which were alleged to have affected Blake on her job, mostly in Arlington. (App. *infra* 37a). The trial court also noted that the failure to promote Blake and eventually to discharge her were made in Virginia or at corporate headquarters in Colorado. (*Id.*).

The trial court's Virginia-focused analysis was fully justified by the emphasis in Blake's own complaint on Defendant Boswell's rejection of Blake's applications for two managerial-level promotions in Virginia and Blake's firing, both of which occurred in Virginia (Count I, ¶ 80; Count II, ¶ 91; Count IV, ¶¶ 99-101; Count V, ¶ 108; App. *infra* 55a-56a, 59a, 61a-62a, 63a). The trial court's public factors analysis of the claims which recognized the strong Virginia contacts was also warranted by Blake's hostile work environment claim. That claim alleged interference with Plaintiff's work performance and the creation of a hostile working environment. (Count II, ¶ 85; App. *infra* 57a). Nearly all of Blake's work took place in Virginia. (App. *infra* 43a, 67a-69a).[7]

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7. The court of appeals' invocation of the standard in *Jimmerson v. Kaiser Found.*, 663 A.2d 540, 543 (D.C. 1995) (whether "the District has so little to do with this case that its courts should decline to hear it") misapplies District of Columbia law. (App. *infra* 8a). In *Jimmerson*, unlike here, the plaintiff was a resident

(Cont'd)

While the court of appeals concluded that none of the *Gulf Oil* public factors "can reasonably be said to have warranted dismissal of Blake's suit" (App. *infra* 11a), the court of appeals did not address at all two of the trial court's specific public factor findings. The trial court found that (1) Professional Travel has a substantial Arlington, Virginia presence, and thus local interest in resolving the dispute arises primarily in Virginia; and (2) Blake's employment relationship with Professional Travel is governed by Virginia law. (App. *infra* 37a). This court has held that these two particular public factors are important in analyzing a case for forum non conveniens. *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947); *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 259-60 (1981).

Neither did the court of appeals find, as it must to reverse a trial court for a clear abuse of discretion, that the trial court did not consider all the relevant public factors or that its analysis was unreasonable. *See Piper Aircraft*, 454 U.S. at 257. Most significantly, the court of appeals never found – and surely on these facts it could not – that the public factors actually favored the District of Columbia. All the court of appeals found was that Blake's work-related lawsuit "reasonably invokes the resources of the District of Columbia courts." (App. *infra* 11a). By no means is this enough to justify reversal under an abuse-of-discretion standard.

(Cont'd)
of the District of Columbia. *Jimmerson*, 663 A.2d at 543. There was thus a strong presumption that the plaintiff's choice of his home forum was correct. (*Id.*). The superior court correctly relied on *Mills v. Aetna Fire Underwriters Ins. Co.*, 511 A.2d 8 (D.C. 1986) (App. *infra* 38a), which directs that where the plaintiff is not a District of Columbia resident and another jurisdiction has more substantial contacts with the action, the burden to demonstrate why the action should not be dismissed rests on the *plaintiff*. *Mills*, 511 A.2d at 10-11.

In next reviewing the *Gulf Oil* private factors, the court of appeals observed that the trial court had found that the more convenient forum was Virginia. (App. *infra* 12a). Without directly challenging that finding, the court of appeals concluded that the trial court had applied an "erroneous standard." (*Id.*). According to the court of appeals, the trial court should have first found that the District of Columbia is a "*seriously inconvenient forum*" before it dismissed the matter in favor of another forum. (Emphasis in original).[8] (App. *infra* 13a).

The court of appeals' analysis in this regard is twice flawed. *First*, the court of appeals never found that the public factors actually favored the District of Columbia. As demonstrated herein, it could not do so. Consequently, the court of appeals relied on a nonexistent premise for imposing its newly pronounced "seriously-inconvenient-forum" standard. *Second*, as discussed above, the court of appeals has turned the *Gulf Oil/Piper Aircraft* analysis on its head by addressing the public factors first. The effect is to unreasonably discount the private factors, which should be paramount in a trial and appellate court's forum non conveniens analysis.

The court of appeals also noted that "arguably the two most important witnesses, Blake and Boswell, live in

8. For this proposition, the court of appeals cited *Cresta v. The Neurology Ctr, P.A.*, 557 A.2d 156 (D.C. 1989), a case where the plaintiff had resided in the District of Columbia during the events in dispute, the corporate defendant had an office in the District of Columbia and was a District of Columbia corporation, and the hospitals with relevant records were in the District of Columbia. (App. infra 13a). The court of appeals initially found that the private factors strongly militated in favor of the District of Columbia. *Cresta*, 557 A.2d at 162. Obviously, the case at bar is quite different.

Maryland and the District of Columbia, respectively." (App. *infra* 12a n.7). This ignores the trial court's factual finding, fully supported in the record, that compulsory process is likely to involve witnesses primarily located in Virginia. (App. *infra* 36a). Indeed, to support its contentions concerning Blake's loss of the Federation of State Boards of Physical Therapy account in Virginia, Professional Travel will likely have to call Federation managers employed in Virginia. (App. *infra* 43e, 69a). In addition, as the trial court found, it would be easier and slightly less costly for employee witnesses working at Professional Travel's Arlington office to attend a local trial in Arlington. (App. *infra* 36a). That factual finding remains unchallenged.

The court of appeals also downplayed the trial court's finding that most of the documents and sources of proof can be found only at Professional Travel's offices in Arlington. (App. *infra* 12a n.7; *see* App. *infra* 35a). The court of appeals observed that there was no contention the parties would have difficulty bringing documents from Arlington to the District of Columbia. (App. *infra* 12a n.7). Yet, this analysis simply ignores that the trial court is required to consider the "*relative ease* of access to sources of proof. . . ." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981) (emphasis added). This analysis involves a comparison of access to the two jurisdictions. The court of appeals did not find, nor could it, that it is as easy to transport documents from Professional Travel's Arlington offices into the District of Columbia as to the courthouse in Arlington.

The court of appeals also relied on the fact that Virginia's authority to compel attendance of witnesses at trial stops at Virginia's borders while the District of Columbia's subpoena authority extends 25 miles from the District of Columbia

courthouse. (App. *infra* 12a n.7). Here, the court of appeals erected a straw man – that a trial would occur in a Virginia *state* court. Yet, Blake stated to the trial court that she would try her case in Virginia under Title VII of the Civil Rights Act of 1964 (App. *infra* 17a, 23a), which would involve a trial in the United States District Court for the Eastern District of Virginia. *See* 42 U.S.C.§ 2000e-5(f)(5) (Title VII claims must be brought in Federal District Court)). A district court's trial subpoena power extends 100 miles in all directions, far beyond the 25-mile limit of a District of Columbia subpoena. *See* Fed. R. Civ. P. 45(b)(2).

The court of appeals failed to show that the trial court did not reasonably consider the *Gulf Oil* private factors in finding that the more convenient forum was Virginia and that the balance of all the factors strongly favors resolution of the dispute in Virginia. (App. *infra* 37a). Since the court of appeals has not demonstrated a clear abuse of the trial court's discretion, the court of appeals' overturning of the trial court's forum non conveniens decision must be reversed.[9]

II. The Court of Appeals Applied The Wrong Law In Overturning the Trial Court

In this employment discrimination case, Blake, a Maryland resident, chose a forum, the District of Columbia, that is neither her home jurisdiction nor that of her employer, Professional Travel. Thus, Blake is not entitled to the strong

9. It is interesting to note that if this case were brought in Virginia and the circumstances were reversed — *i.e.*, that the facts favored the District of Columbia as a more convenient forum — a Virginia court would likely dismiss the action in favor of the District of Columbia. *See, e.g., Norfolk and Western Ry. Co. v. Williams*, 239 Va. 390 (1990).

judicial presumption of District of Columbia jurisdiction that would attach if she were a District of Columbia resident. The District of Columbia superior court here found that the balance of the *Gulf Oil/Piper Aircraft* private factors strongly favors the Defendants and that the public factors also weigh in favor of the Defendants. (App. *infra* 35a, 36a-37a).

In these circumstances, the court of appeals wrongly placed the burden on the Defendants to show that the District of Columbia is a "*seriously inconvenient forum*" (emphasis on original). (App. *infra* 13a). The burden falls, instead, on Blake to offer "specific reasons of convenience supporting . . . [her] choice." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 249 (1981) (footnote omitted). As the trial court noted, Blake did not argue that Virginia was inconvenient for her. (App. *infra* 37a). Accordingly, the court of appeals should have affirmed the trial court's dismissal of the case.

III. The Court of Appeals Incorrectly Relied On The Uncertainty Whether Blake Would Be Able Fully To Litigate Her Claims In A Virginia Court To Find That Litigating The Case In Virginia Would Pose A Serious Risk Of Inconvenience.

The court of appeals found that the "most serious" risk of inconvenience was Blake's. (App. *infra* 13a). The court of appeals stressed that it was uncertain whether a Virginia court would even entertain Blake's District of Columbia Human Rights Act claim. (*Id.*). The court of appeals added that the inability of Blake to sue Defendant Boswell individually under Title VII of the Civil Rights Act of 1964[10]

10. Blake does not seek separate relief from Defendant Boswell for any of the District of Columbia Human Rights Act claims. Boswell's conduct on the job could be attributed to Professional Travel in a Title VII action. *Faragher v. City of Boca Raton*, 524 U.S. 775, 789 (1998).

and Title VII's statutory damages cap "complicate[d] the issue of whether relief commensurate with her alleged injury would be available to her in Virginia." (App. *infra* 13a-14a n.8). The Court also faulted the trial court for providing that Blake could return to the District of Columbia trial court if she contended the relief provided in Virginia was not adequate. (App. *infra* 13a).

The court of appeals' heavy reliance on the potential unavailability of the same level of relief in Virginia under Title VII as in the District of Columbia under the District of Columbia Human Rights Act contradicts the holding in *Piper Aircraft*. In *Piper Aircraft*, this Court cautioned against giving "substantial weight" in a forum non conveniens inquiry to a showing that the substantive law that would be applied in the alternative forum is less favorable to the plaintiff than that of the present forum. 454 U.S. at 247. Were it otherwise, a plaintiff like Blake would be encouraged to choose a forum not because it is convenient but to "take advantage of favorable law." *Id.* at 249 n.15.

Blake informed the trial court that she would bring suit in Virginia not under the District of Columbia Human Rights Act, but under Title VII. (App. *infra* 17a, 23a). Thus, the court of appeals' speculation that a suit under the District of Columbia Human Rights Act could not be maintained in a Virginia federal or state court is beside the point and cannot be a basis for reversal. The trial court also acted properly under well established District of Columbia case law in providing that, if a court in Virginia could not afford adequate relief, Blake could bring her case back to the District of Columbia. *See Mills v. Aetna Fire Underwriters Ins. Co.*, 511 A.2d 8, 14-16 (D.C. 1986).

CONCLUSION

For the foregoing reasons, the Court should grant Professional Travel's petition for certiorari in this case and reverse the court of appeals' judgment.

Respectfully submitted,

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APPENDIX A — OPINION OF THE DISTRICT OF COLUMBIA COURT OF APPEALS DATED, DECIDED AND FILED MARCH 8, 2001

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 99-CV-1495

TOMSENE BLAKE,

APPELLANT,

v.

PROFESSIONAL TRAVEL CORPORATION, *et al.*,

APPELLEES.

Appeal from the Superior Court of the District of Columbia

(Hon. Susan R. Winfield, Trial Judge)

(Argued December 1, 2000 Decided March 8, 2001)

* * *

Before SCHWELB, FARRELL, and REID, *Associate Judges.*

FARRELL, *Associate Judge*: Blake appeals from an order of the trial court dismissing on the ground of forum non conveniens her complaint alleging, *inter alia*, sexual discrimination in violation of the District of Columbia Human Rights Act. We agree with Blake that the defendants have not met their burden of establishing reasons why her choice of forum should not be respected. In particular,

the close factual connection between the District of Columbia and the discriminatory acts alleged, together with the absence of any genuine showing of inconvenience to the defendant-appellees, persuades us that this is not a proper case for application of the inconvenient forum doctrine. Therefore, although we recognize the deference generally accorded to the trial court on rulings of this kind, we reverse the order of dismissal and remand the case to the Superior Court for further proceedings.

I. The Allegations

For present purposes, the allegations of the complaint must be accepted as true. *See Vincent v. Anderson*, 621 A.2d 367, 372 (D.C. 1993). Blake's suit arises from her employment by defendant-appellee Professional Travel Corporation (PTC). A resident of Maryland at the time, Blake began working for PTC in its Arlington, Virginia office as a professional travel agent in May 1997.[1] PTC maintains its east coast regional headquarters in Arlington and does most of its local business from that location, but also has on-site offices and personnel at law firms and other organizations in the District of Columbia. Blake was interviewed and hired by defendant-appellee Sarah K. Boswell, a resident of the District of Columbia and Director of Operations for PTC's Arlington office at the time.

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1. PTC is a travel agency incorporated and headquartered in Colorado, and a wholly owned subsidiary of defendant-appellee Navigant International, Inc. (Navigant), a Delaware corporation also headquartered in Colorado. Unless otherwise indicated, the corporate defendants will be referred to jointly as PTC.

Appendix A

Blake alleges that in June 1998, Phyllis Reagan, a corporate Vice-President of PTC at the Arlington office, made sexual advances toward her at a bar in Virginia while in the company of other PTC employees. On succeeding occasions, Blake rejected further overtures from Reagan and received assurances from her that she would not be fired for doing so. Beginning in July 1998, according to the complaint, Boswell then engaged in a pattern of unwanted sexual advances and contact with Blake. Boswell initially scheduled an appointment with Blake, who was a registered massage therapist, for a massage at Boswell's home in the District of Columbia. After the massage the pair had lunch at a restaurant before returning to Boswell's home, where Boswell began fondling Blake's breasts and genitals. The two ultimately engaged in various sexual acts. On succeeding days Blake told Boswell that she did not want a sexual relationship with her, and Boswell responded by harassing and humiliating her in front of other PTC employees.

During the course of the next year, Boswell made numerous demands that Blake accompany her on lunch dates and other social events, including camping and ski trips. Blake acquiesced in these demands because Boswell had told her "explicitly and implicitly" that she "needed to do so to keep [her] job at PTC." In February 1999, Boswell invited Blake to a bar and restaurant in the District to discuss management-level positions that Blake had applied for at PTC, including one as on-site travel manager at two District law firms. Boswell then invited Blake to her home where she forced herself upon Blake sexually, causing Blake to have to push her way past Boswell and leave the house. Blake was ultimately denied the promotions she was seeking.

Appendix A

Blake further alleges that from July 1998 through June 1999 Boswell "continuously and repeatedly" telephoned her from Boswell's home in the District. In these calls, which often occurred five to seven times a week, Boswell demanded that Blake engage in sexual acts with her and accompany her socially to various locations. In one such conversation, Boswell stated that "as long as there's an us, you'll have a job at PTC," and in other conversations threatened changes in Blake's work schedule if she did not acquiesce in the sexual demands. In several phone conversations before Boswell rejected Blake for the on-site manager positions, Boswell told her that she was not "cooperating," and Blake replied that "[Boswell's] idea of cooperation included acts of sex and social companionship[,] which ... were unwanted and unwelcome."[2]

During the same one-year period, Blake accompanied Boswell to a variety of locations in the District where Boswell demanded sexual relations and engaged in unwanted touching of Blake's person.[3] Meanwhile, the telephone calls from

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2. Besides being denied the promotions in retaliation for having spurned Boswell's advances, Blake alleged that her frequent absences together with Boswell at lunchtime caused a hostile reaction on the part of other employees, compounded by the belief of those employees that she "was receiving preferential treatment in the workplace ... from Boswell."

3. According to Blake, on these occasions Boswell "would engage in unwanted touching, feeling, and caressing of my breasts and the kissing of my face and neck, including ... holding my hand in the car and in public places; putting her arm around my waist and shoulders; kissing my face and neck; touching my breasts in the car." Blake "repeatedly reiterated ... my desire that she stop ... but she would not listen to me and persisted in these acts."

Boswell's home continued, showing a "marked increase" in June 1999 when Boswell demanded that Blake accompany her on a camping trip and other activities, which Blake refused. Finally, in June, Blake demanded that Boswell "should forever and finally cease from pressuring [her] for sexual favors."

On or about June 30, 1999, at a meeting attended by Blake, Boswell and Lynnette Heiges, the Human Resources Representative for PTC in Arlington, Boswell handed Blake a termination letter which she had written. The letter stated that Blake had been on probation since May 19, 1999, because of her inability to effectively service the account of The Federation of State Board Physical Therapy, a PTC client for which Blake was the primary designated travel agent. The letter purported to base Blake's termination on PTC's loss of this account in June 1999, and indicated that Blake's performance since May 19, 1999, was the reason the account had been lost. When Heiges mentioned that there was no probation letter in Blake's personnel file, Reagan became involved in the situation. She called corporate headquarters in Colorado and was informed that there was not a probation letter in Blake's file. Nevertheless, about a week later, Reagan left a voice message on Blake's home answering machine stating that she was going to abide by Boswell's decision to terminate Blake.

On the basis of these allegations, Blake sued PTC and Boswell in the Superior Court for sexual harassment, creation of a hostile workplace, and retaliation under the District of Columbia Human Rights Act, D.C. Code §§ 1-2501, *et seq.* ("DCHRA"), as well as for intentional infliction of emotional

distress and interference with prospective economic advantage. The defendants jointly moved to dismiss, primarily on the grounds that the alleged discriminatory and retaliatory acts, especially Blake's termination, had not taken place in the District of Columbia, thus depriving the court of subject matter jurisdiction under the DCHRA. The defendants also argued that the District would be an inconvenient forum under D.C. Code § 13-425 (1995).[4]

In rejecting the first ground for dismissal, the trial judge noted particularly the defendants' failure

> to dispute plaintiff's allegations that many of the sexual activities about which plaintiff complains occurred in the District. There is no dispute that, as alleged on the face of the complaint, the corporate defendants are vicariously liable, on a *respondeat superior* theory, for the actions of the defendant Boswell. Many of the charged events are alleged to have taken place at Boswell's home in the District of Columbia. In addition, defendant Boswell, as agent for the corporate defendants, is alleged to have made numerous threatening and harassing phone calls from her home in the District of Columbia.

The court ruled that the numerous acts alleged to have occurred in the District established a basis for jurisdiction

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4. D.C. Code § 13-425 provides as follows: "When any District of Columbia court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss such civil action in whole or in part on any conditions that may be just."

under the DCHRA, citing *Matthews v. Automated Bus. Sys. & Servs., Inc.*, 558 A.2d 1175, 1180 (D.C. 1989) (in determining jurisdiction under the DCHRA, "the critical factual issue is whether these events [alleged in plaintiff's complaint] took place in the District.").

The judge nonetheless dismissed the complaint on the ground of forum non conveniens. Considering the "private" and "public" factors set forth in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), the judge concluded that "Virginia has the closer ties to this litigation" in part because PTC's "business in the District of Columbia was limited, relative to the amount of business conducted in Virginia"; the decisions not to promote Blake and to terminate her were made in Virginia or at corporate headquarters in Colorado; and the "impact of the [sexual] harassment is alleged to have affected plaintiff on her job which was primarily in Arlington, Virginia." The judge also reasoned that Virginia would not be an inconvenient forum for Blake to litigate the case. In dismissing, the judge stated that she "[could not] conclude that plaintiff's choice of forum is more convenient than an equally available forum in a neighboring jurisdiction."

II. Legal Standards

"Although the authority to dismiss for forum non conveniens is conferred by [D.C. Code § 13-425], this court has adopted the forum non conveniens analysis articulated by the Supreme Court in *Gulf Oil Corp. v. Gilbert*, [*supra*]." *Coulibaly v. Malaquias*, 728 A.2d 595, 600 (D.C. 1999) (citations omitted). Under the *Gulf Oil* analysis, a court considers two categories of factors in deciding whether to

dismiss for forum non conveniens: the "private interests" of the litigants and the "public interests" of the forum. *Id.* Once those factors are weighed against each other, "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Id.* at 601 (quoting *Gulf Oil*, 330 U.S. at 508).

It is true that the residence of the plaintiff bears upon the respect accorded her choice: "When the plaintiff resides in another jurisdiction, we afford less deference to [her] choice of forum, particularly where the defendant also does not live in the District of Columbia." *Id.* Ultimately, however, the defendant has the burden of proving that the District is an inconvenient forum unless "it is shown that neither party resides in the District and the plaintiff's claim has arisen in another jurisdiction which has more substantial contacts with the cause of action." *Id.* (quoting *Mills v. Aetna Fire Underwriters Ins. Co.*, 511 A.2d 8, 11 (D.C. 1986) (emphasis deleted)). Stated otherwise, the inquiry is not "[w]hether the District of Columbia is the best forum for this litigation," but rather "whether the District has so little to do with this case that its courts should decline to hear it." *Jimmerson v. Kaiser Found.*, 663 A.2d 540, 543 (D.C. 1995) (quoting *Jenkins v. Smith*, 535 A.2d 1367, 1371 (D.C. 1987) (en banc)); *Auerbach v. Frank*, 685 A.2d 404, 410 (D.C. 1996).

Although this court reviews a decision to dismiss on grounds of forum non conveniens for abuse of discretion, trial court rulings in this area receive closer scrutiny than most other exercises of discretion, in that we conduct an independent analysis of the public and private interests involved in the case. *Coulibaly*, 728 A.2d at 601; *Ussery v.*

Kaiser Found. Health Plan of Mid-Atlantic States, Inc., 647 A.2d 778, 780 (D.C. 1994); *Jenkins*, 535 A.2d at 1369-70. We have interpreted this standard

> to mean that, first we apply "close scrutiny" to the specific factors identified and evaluated by the trial court; once we are satisfied that the trial court took the proper factors into account, we adopt a deferential approach in determining whether the trial court's decision fell within the "broad discretion" committed to it.

Coulibaly, 728 A.2d at 601. In the end, we ask whether the trial judge has "reasonably evaluated the motion in light of the relevant factors." *Smith v. Alder Branch Realty Ltd.*, 684 A.2d 1284, 1289 (D.C. 1996); *see Coulibaly*, 728 A.2d at 604.

III. Discussion

In explaining why she rejected appellees' jurisdictional argument, the trial judge pointed to Boswell's numerous alleged acts of sexual coercion and harassment in the District of Columbia which formed the basis of Blake's complaint. Blake argues that those same actions, together with PTC's corporate presence in the District, its responsibility under the law for the acts of its supervisor Boswell, a resident of the District, and the defendants' failure to demonstrate any significant inconvenience in litigating this case in the District's courts, necessitate the conclusion that the judge abused her discretion in dismissing for inconvenient forum. We are compelled to agree.

Appendix A

A. The Public Factors

Blake alleged that PTC, through Boswell, created a hostile work environment which extended beyond the office setting in Arlington where Blake primarily worked, to include a year-long off-hours relationship during which Boswell used her authority as office director and supervisor to attempt to coerce sexual favors. As the trial judge acknowledged, there is no question that this entire course of alleged conduct, much of which occurred in the District, would be relevant to Blake's claim of discrimination under the DCHRA. *See, e.g., Matthews, supra*; *Howard Univ. v. Best*, 484 A.2d 958, 976-84 (D.C. 1984). Yet, in evaluating the "public factors" relevant to inconvenient forum analysis — essentially in asking whether "the District has so little to do with this case that its courts should decline to hear it," *Jimmerson, supra*, — the trial judge focused largely on the "impact" Boswell's actions had on Blake's employment, pointing to the fact that "[t]he decisions not to promote [Blake] and to terminate her were made in Virginia or at corporate headquarters in Virginia."[5] We think this emphasis unduly truncated Blake's claim — which alleged both creation of a pervasively hostile work environment *and* retaliation for her rejection of Boswell's sexual demands — and thus diminished the weight of the contacts between her suit and the District of Columbia.

The trial judge also determined that PTC's "business in the District of Columbia was limited, relative to the amount

5. The judge might also have been referring to Blake's claim that her apparent close relationship to Boswell generated a hostile reaction on the part of her co-employees in the Arlington office. See note 2, *supra*.

of business [it] conducted in Virginia." Although that is true, the judge did not conclude, nor do we think she reasonably could have, that Virginia's interest in enforcing its laws against job discrimination would exceed the District's in enforcing the DCHRA on facts such as this case alleges. Boswell was a resident of the District of Columbia; much of the alleged use of her superior position to coerce favors originated from her home; and her status as a PTC director and supervisor is what implicates the corporation in conduct forbidden by the District's anti-discrimination statute. *See Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 762 (1998) (a "tangible employment action," which is "the means by which [a] supervisor brings the official power of the enterprise to bear on subordinates[,] ... becomes for Title VII purposes the act of the employer").[6]

For these reasons, none of the *Gulf Oil* public factors can reasonably be said to have warranted dismissal of Blake's suit. It is not a controversy "local" to Virginia which that state has a paramount interest in resolving; it will not burden the Superior Court with the "congest[ion of] foreign litigation"; and it will not unfairly impose on District citizens the duty to adjudicate a matter "having no relation to" the District of Columbia. *Coulibaly*, 728 A.2d at 601. Whatever its ultimate merits, Blake's suit alleging a sustained pattern of sexual harassment in the District by a senior officer of PTC who resides in the District is one that reasonably invokes the resources of the District of Columbia courts.

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6. *See, e.g., Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873, 888 n.31 (D.C. 1998) (noting that this court generally looks to Title VII of the Civil Rights Act of 1964 in interpreting the DCHRA).

B. The Private Factors

Dismissal might nonetheless have been warranted if the private factors of *Gulf Oil* militated in favor of another forum. *See, e.g., Forgotson v. Shea*, 491 A.2d 523, 526-28 (D.C. 1985) (affirming dismissal of suit by Maryland resident against New York partnership, despite fact that plaintiff worked in District office of the partnership, where most partners lived and worked in New York and would suffer hardship if required to litigate in the District). In this case, however, witnesses and evidence will be at least as available in the District as in Arlington,[7] and PTC maintains a significant presence in the District. The most the trial judge could say in this regard was that "[i]n terms of ease, expense and expedience, it appears that the *more* convenient forum is Virginia" (emphasis added). But that conclusion applies an erroneous standard when, as here, the public factors weigh

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7. Indeed, arguably the two most important witnesses, Blake and Boswell, live in Maryland and the District, respectively. In addition, while Virginia's power to compel attendance of witnesses at trial stops at the District line, the Superior Court's subpoena power extends well into Virginia and Maryland. *See* D.C. Code § 11-942(a) (1995) ("A subpena [sic] may be served . . . at any place without the District of Columbia that is within twenty-five miles of the place of the hearing or trial specified in the subpena [sic]."); *see also Smith*, 684 A.2d at 1290 n.3 (finding that D.C. Code § 11-942(a) argues in favor of retaining jurisdiction in the District). As for "ease of access to sources of proof," *Gulf Oil*, 330 U.S. at 508, the record is vague as to the amount and types of documents that will be relevant, but no contention is made that they will be so numerous that the parties would have difficulty bringing them from Arlington to the District. And the District would be as convenient as Virginia in obtaining any documents located in Colorado.

in favor of retaining jurisdiction of the case, for "[t]he 'purpose of the [inconvenient forum] doctrine ... is to avoid litigation in *a seriously inconvenient forum*, rather than to ensure litigation in the most convenient forum.' " *Cresta v. The Neurology Ctr., P.A.*, 557 A.2d 156, 161 (D.C. 1989) (citation omitted; emphasis by *Cresta*); *see Hechinger Co. v. Johnson*, 761 A.2d 15, 20 (D.C. 2000) (same).

Indeed, the most serious risk of "inconvenience" would appear to be to Blake's claim under the DCHRA if she cannot litigate it in the District. Both parties acknowledge the uncertainty of whether a Virginia court would entertain a claim under the DCHRA. *See Sartori v. Soc'y of Am. Military Eng'rs*, 499 A.2d 883, 889 n.9 (D.C. 1985) (noting but not attempting to answer question of whether Virginia courts would entertain cause of action based on the DCHRA). The trial judge shared this concern, but reasoned that Blake could pursue the DCHRA claim or an equivalent one, *i.e.*, under Title VII, in the Virginia courts and then seek to reinstate her suit in the District if the relief afforded her there proved inadequate. When, however, the District's connection with the acts generating the claim is as sizable as we have seen it to be in this case, that analysis puts the cart before the horse.[8]

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8. Blake argued, moreover, that she would be unable to sue Boswell individually in Virginia since Title VII does not recognize individual claims against supervisors. *See Lissau v. Southern Food Serv. Inc.*, 159 F.3d 177, 180-81 (4th Cir. 1998) (supervisors are not liable in their individual capacities for Title VII violations); *Gary v. Long*, 313 U.S. App. D.C. 403, 411, 59 F.3d 1391, 1399 (1995) (same). *See*, by contrast, *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, *supra* note 6, 715 A.2d at 888 (supervisors can be individually liable under the DCHRA). Blake argued too that any

(Cont'd)

Blake should not have to exhaust her remedies, so to speak, in Virginia before seeking recourse here from alleged discrimination grounded so heavily in local activity.

The judgment of the Superior Court is, therefore,

Reversed.

(Cont'd)
Title VII claim would be subject to a statutory damages cap, which is not the case under the DCHRA. *See* 42 U.S.C. § 1981a(b)(3) (capping damages according to the size of the employer). Although we do not evaluate these contentions, they complicate the issue of whether relief commensurate with her alleged injury would be available to her in Virginia. *See Coulibaly*, 728 A.2d at 601 (quoting with approval *Pain v. United Technologies Corp.*, 205 U.S. App. D.C. 229, 238, 637 F.2d 775, 784 (1980) (as prerequisite to dismissal for inconvenient forum, "the court must establish whether an adequate alternative forum exists which possesses jurisdiction over the whole case")).

APPENDIX B — TRANSCRIPT OF HEARING OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, CIVIL DIVISION DATED OCTOBER 29, 1999

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Docket No.: CA-5195-99

BLAKE,

Plaintiff.

vs.

PROFESSIONAL TRAVEL, CORPORATION.

Defendant.

October 29, 1999
Washington, D.C.

The above-entitled action came on for a hearing before the **Honorable Susan R. Winfield, Associate Judge,** in Courtroom Number 310.

* * *

[2] **PROCEEDINGS**

(Due to a defect in the audio recording system, portions of these proceedings were inaudible.)

Appendix B

THE CLERK: Blake versus Professional, Civil Action 5195-99.

THE COURT: Counsel, identify yourself.

MR. MASSARI: Good morning, Your Honor. Patrick Massari for the Plaintiff.

MR. MURPHY: May I please the Court. Tom Murphy for Defendants, Your Honor.

MR. BURKLEY: And, Bruce Burkley, for Defendants.

THE COURT: Well, I got to it like I said I would. But, the reason I asked you to come to court anyway rather than just fax you copies of the order, is that I was persuaded by the Motion to Dismiss on *Forum Non Conveniens* grounds. I was not persuaded on the other ground. But, denied the Motion to Dismiss 12(b)(1) and 12(b)(6), but granted the motion on *forum non conveniens* grounds.

The problem is, I don't see a statute of limitations issue. But, I wanted to make sure that everybody made a representation that there is no statute of limitations issue. I saw all three-year counts.

MR. MURPHY: I think that's right for Defendants, yes, Your Honor. I think at this point we would have to — of course Discovery might disclose something else. But, at this [3] stage, we're not aware that there's — in other words, I think what the Court is saying is if the party was to re-file in another jurisdiction —

Appendix B

THE COURT: In Virginia. Now —

MR. MURPHY: — would she be prejudiced — **(Inaudible)** — right.

MR. MASSARI: Well, Your Honor, she'd file in Virginia under Title 7.

THE COURT: Okay.

MR. MASSARI: If that was — if that's gonna be the Court's decision.

THE COURT: And, that's for one year?

MR. MASSARI: Virginia's — we're not — they don't have a state cause of action in Virginia. Title 7 case.

MR. MURPHY: Defendant's position would be —

THE COURT: I'm asking you a simple question. Is that a one-year? I don't know.

MR. MASSARI: Statue of Limitations for Title 7 is file your complaint 300 days, and then you got 30 days from the time that the — **(Inaudible)** — I don't know what the status is —

THE COURT: So, there's no bar that you know of to file it in Virginia?

MR. MASSARI: There may be, Your Honor. I was not aware of the Court's — wasn't aware that the Court was gonna [4] ask that question.

THE COURT: Okay.

MR. MASSARI: I can't represent that there isn't.

MR. MURPHY: May I please the Court. Your Honor, we would take the position that it most likely would not be time-barred. Our position is under Title 7 —

THE COURT: **(Inaudible)**

MR. MURPHY: I'm sorry, Your Honor?

THE COURT: I need more than that.

MR. MURPHY: Okay.

THE COURT: In order to grant the motion —

MR. MURPHY: I see. Okay.

THE COURT: — it seems to me it has to be clear that there is an alternative forum. Which means, you have to raise what might be a — **(Inaudible)**

MR. MURPHY: I'll be very clear, Your Honor.

With respect to a claim under Title 7 of the Civil Rights Act of 1964, presently such a claim would be timely. And, the reason is, is that Plaintiff has filed an administrative complaint with the Equal Employment Opportunity Commission, that appears to be timely, that complaint with the EEOC, with respect to her termination.

Appendix B

The EEOC has not completed its investigation. Once they complete their investigation and issue what is called a, Right to Sue Letter, then a claim in the public sector has 90 [5] days from that within which to file a complaint in Federal District Court. Because the Plaintiff —

THE COURT: What is she wants —

MR. MURPHY: I'm sorry, Your Honor.

THE COURT: I'm sorry to cut you off, but what if she wants to add all of her complaints, not just the termination?

MR. MURPHY: What, the tort claims?

THE COURT: All of them.

MR. MURPHY: All of them. Contacted, et cetera —

MR. MASSARI: Including a wrongful discharge, Your Honor.

THE COURT: Right.

MR. MASSARI: May have a shorter statute.

MR. MURPHY: Well, again, we've had the same issue under the —

THE COURT: I'm waiting for a magic word. Waiver. You're waiving. Otherwise, I keep the case here. I can do lots of things. I can give you time to go think about it and

give me something in writing that is a waiver. I can, actually, only do two things. Take a waiver or keep the — **(Inaudible)** I think that's the only — **(Inaudible)** I cannot dismiss this case only to find out that I've run the Plaintiff into a brick wall in Virginia.

MR. MURPHY: My — okay. I'm sorry.

THE COURT: You've got to have a right to pursue [6] this.

MR. MURPHY: If it's on *forum non conveniens* grounds?

THE COURT: Right. Right. Now, you haven't lost anything on 12(b)(1) and the 12(b)(6).

MR. MURPHY: I understand, Your Honor. In other words, it's okay. I — I, just to be on the — I'm not aware — the conceptual problem I'm having, Your Honor, is the Plaintiff in this complaint in Superior Court has asserted claims which may be unique to the District of Columbia.

For instance, she has asserted a couple of counts under the D.C. Human Rights Act.

THE COURT: Right.

MR. MURPHY: I'm not sure about the statute of limitations on some of those claims because while her discharge might be timely, not time-barred, she has some other complaints within there. The way she was treated at work, for instance.

THE COURT: Right. They go back to June —

MR. MURPHY: That might be time-barred.

THE COURT: — of '98.

MR. MURPHY: Right. That might be time-barred even if the case remained here. I'm not sure I would want to waive those claims. That's why I'm saying if counsel for the Plaintiff is representing that if he were to file, or it sounds like he intends to file in Virginia under Title 7 of the Civil Rights Act of 1964, then we would be prepared at this time to [7] waive any statute of limitations claim to a discharge claim under Tittle 7.

THE COURT: Right.

MR. MASSARI: Well, Your Honor, that's not exactly — you say the discharge —

THE COURT: A little less than what you've brought here. I understand that.

MR. MASSARI: Well, there's a distinction. There's a discharge claim under Title 7. There's — I'm not admitted in Virginia, so I'm not gonna make any representations to the Court about Virginia because I'm not admitted there. I don't know the law there. I'm admitted in the District.

The wrongful discharge law, as I understand, there's a cause of action, correct me if I'm wrong, Mr. Murphy, but there may be a cause of action for wrongful discharge separate

— that's recognized — **(Inaudible)** — employees. Let's put it that way. I don't know that because, as I said, I'm not a Virginia attorney. I can't make any representations as to what we won't — or won't do in Virginia.

THE COURT: Okay.

MR. MASSARI: You know, it seems to me that — I hear defense counsel saying they're not gonna waive it, so — and, I don't know — I can't make representations to the Court because you're asking me questions that I don't know the answer — I don't mean to —

[8] THE COURT: No, that's not —

MR. MASSARI: — put you off or to be rude, Your Honor, I just can't make representations on behalf of my client that don't know the answers to.

THE COURT: I wonder — **(Inaudible)** — I couldn't issue this order dismissing on *forum non conveniens* grounds — **(Inaudible)** — long enough to give them time to file — **(Inaudible)** —

MR. MASSARI: We can't — Judge, we can't file any cause of action, and this is a limited amount, I know. I know the federal law.

THE COURT: Right.

MR. MASSARI: Counsel in their papers has indicated that we can't file a state cause of action in Virginia because of the number of employee situation.

THE COURT: Right.

MR. MASSARI: I think that's — I looked at the statute; that's what it seems to say. So, the sole cause of action in Virginia, there's a title — there is no state cause of action.

THE COURT: Okay.

MR. MASSARI: So, there's gonna be a Title 7 cause of action with pendent tort claims. Probably, intentional infliction of emotional distress.

THE COURT: Right.

[9] MR. MASSARI: Interference with contact, and a wrongful discharge claim that's a lot stronger, the case law notwithstanding, then, *Carl* and the other cases, than it is in the District. But —

THE COURT: Uh-huh.

MR. MASSARI: If you stay it it's gonna be six months at a minimum. We filed with the EEOC in August.

THE COURT: Right.

MR. MASSARI: And, the *Martini* case says, if you don't wait — I mean, if you don't wait the requisite time period, you get your case dismissed. Because, it's —

THE COURT: What I want to do is leave her able to come back to this jurisdiction and say, we did exactly what

you said. We went to what think is the more convenient forum, and then we ran into a brick wall because the Defendants cut off some of our claims which shows — we thought it was a more convenient forum, Judge, what it wasn't. Because, she's not able to bring some of her claims based on what the defense has argued.

If you don't feel you need that protection, then I will issue this order. Dismiss on the theory that she has all claims available to her under Title 7. And, to either move to reconsider, move to reinstate, move to do something, if there's trouble in Virginia.

MR. MASSARI: Now, there's gonna be trouble. I'm [10] sure there's gonna be trouble in Virginia. I'm not admitted there — I don't know — I can't tell you that. I mean —

THE COURT: But, it's for her that I'm concerned.

MR. MASSARI: I understand that. And, I guess I'm a little confused about what — I mean, the Court — obviously, I'm not gonna be heard on *forum non conveniens* as Your Honor appears to have made up her mind.

THE COURT: Well, no. You are. You can file a motion for reconsideration on the grounds that, not on what you've already argued, because I have made up my mind, but on the grounds that my decision is based on her claim being available to her in Virginia. If they are under different name, the decision's made. If they're not available to her, then it seems to me that a basis for motion for reconsideration. Because, the decision for inconvenient forum ought to be — **(Inaudible)** — not unavailability of a remedy.

So, if one of her claims is unavailable, either under the umbrella of Title 7 or something, then you will file a motion to reconsider.

MR. MASSARI: Does Your Honor include in that the D.C. Human Rights Act claim?

THE COURT: Yes.

MR. MURPHY: Well, Your Honor, I guess I would — the only clarification I would request is on the statute of limitations' grounds. And, having had a chance to like about [11] it a little bit more, Your Honor, I think we are prepared to make representation to the Court on the waiver issue as the Court has asked us to do.

I've gone back and looked at the complaint and there are really only two — two tort claims, I believe, involved here other than the D.C. Human Rights Act. An intentional infliction of emotional distress claim which Virginia does recognize as a cause of action. And, second — and, in Virginia even the most conservative statute of limitations would be a one-year statute of limitations and I don't believe that would be time-barred here from the date of her discharge. Her discharge was this year.

THE COURT: So, the intentional infliction of emotional distress begins in '98, June of '98.

MR. MURPHY: Correct.

THE COURT: It's now November of '99.

MR. MURPHY: Correct. Some of those — those issues may be time-barred. They may be time-barred even if she were in this court.

THE COURT: But, you filed — **(Inaudible)** — June, did you?

MR. MURPHY: July, Your Honor. Late July, I believe. July 25th is the time stamp.

MR. MASSARI: July 23rd. But, in any event, Your Honor, it's not just the tort claims, it's the D.C. Human [12] Rights Act claim which has a one-year statute.

THE COURT: If the statute's equivalent of the Title 7, I'm not worried about it.

MR. MASSARI: Well —

THE COURT: Because, in my view this is so much less conveniently forumed, it makes little sense for her to suit here than there. The law that I saw was is just — **(Inaudible)** — where she's not a D.C. resident and doesn't get the kinds of presumptions that she would get if she were.

The presence of the claim against *Boswell* for incidents that happened after hours in D.C., are neither here nor there in terms of convenient forum. In terms of subject matter jurisdiction is that they called the — **(Inaudible)** — but, not in terms of convenient forum issues.

So, this is what I'm gonna do. I'm gonna issue this order exactly as it is. I'm — **(Inaudible)** — with prejudice on *forum*

non conveniens grounds. Deny the motion to dismiss on 12(b)(1) and 12(b)(6) grounds. React to it. Move for a reconsideration, if you like. Determine what if any — what affect this has on her rights to sue in Virginia, and on, again, a motion for reconsideration — **(Inaudible)**

And, if there's none, then, we'll wait to hear of a lawsuit in Virginia. If there is one, you'll respond.

MR. MURPHY: That's acceptable, Your Honor.

THE COURT: I guess that's the only fair way to do it [13] because you really are being asked to react to something you haven't even — **(Inaudible)** —

MR. MASSARI: Well, that's true.

THE COURT: So, I'll find — I'll issue it and then I'll wait for the motion to reconsider the — **(Inaudible)**

MR. MASSARI: Well, let me just understand the context of the Court's ruling. You're directing or indicating motion to reconsideration vis-à-vis actions in Virginia, that may or may not —

THE COURT: No. Vis-à-vis this decision. If after reviewing all the law there is on *forum non conveniens* you're satisfied that the determination here that this is not a convenient forum does more than force her to go to a more convenient forum, instead it cuts off some of her opportunity to address what she thinks are — **(Inaudible)** — then, obviously, you file a motion for reconsideration. Because,

the law says it's an other convenient forum. It's not just more convenient, but it cuts off claims, then the Court should not deny on those grounds.

And, I can't determine the viability for claims in Virginia. She has to, through you, and counsel in Virginia. **(Inaudible)** — had a chance to study the procedure law and what it does to her claim, and then it seems to me you'd file a motion and state that some of the claims can't be brought there.

[14] Now, it's not a technical title situation, it's not — well, they don't have a DCHRA **(Phonetic)**, which — **(Inaudible)** — But, if the DCHRA claims cannot adequately be brought under Title 7, can't get there from here, then you have an appropriate motion for reconsideration. Because, you can get there from here, from D.C.

MR. MASSARI: So, you're saying that if the Virginia court won't recognize the D.C. Human Rights Act, —

THE COURT: Won't recognize the claims under their title, Title 7. You should get the exact same thing under Title 7 if she goes to Virginia.

MR. MASSARI: Well, that's not exactly true, Your Honor.

THE COURT: If you do not — no, that's — hear my point. If she gets the same thing under Title 7, she goes to Virginia. If she doesn't get as much under Title 7, I don't mean quantitatively, I mean quality.

MR. MASSARI: In terms of?

THE COURT: Money. You've got a sexual harassment claim. I've been discriminated against, she says. If that all falls fully under Title 7 in Virginia, that's where she's gotta go with it. If part of it doesn't fit under Title 7 or the Virginia law, than she comes back here and says, look, I had — I had an opportunity to — **(Inaudible)** — a fuller panoply of wrongs in the District then I have in Virginia, you've got to [15] reconsider, Judge, because I want all my wrongs addressed.

So, read the order. See how much gets knocked off in Virginia, if anything, and then come back.

MR. MASSARI: Okay.

MR. MURPHY: Sounds fair, Your Honor. Thank you.

THE COURT: And, I'll sign this — **(Inaudible)** — you'll have it — **(Inaudible)**

MR. MURPHY: Thank you, Your Honor.

MR. MASSARI: Thank you, Your Honor.

(Thereupon, the proceedings were concluded.)

* * * *

APPENDIX C — MEMORANDUM OPINION AND ORDER OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, CIVIL DIVISION DATED OCTOBER 27, 1999

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 5195 - 99
Judge S. R. Winfield
Calendar 13

Tomsene Blake

Plaintiff,

v.

Professional Travel Corporation, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

A. *Procedural And Factual History*

Before the court is defendants' motion to dismiss the complaint in its entirety, pursuant to Super. Ct. Civ. Rs. 12(b)(1) and 12(b)(6), and on the ground that this is an inconvenient forum, pursuant to D.C. Code §13 - 425; plaintiff's opposition, and defendants' reply thereto. Plaintiff asserts in her complaint (counts one through three), that she was the victim of sexual discrimination under the District of Columbia Human Rights Act ("DCHRA"), D.C. Code

§ 1 - 2501, *et seq.* (1981). Count one of the complaint alleges that all defendants engaged directly or vicariously in a campaign of sexual harassment and acts of retaliation against the plaintiff. Count two alleges that defendants subjected plaintiff to a hostile work environment. Count three asserts that defendants retaliated against plaintiff by denying her an employment promotion to a position to which she was allegedly entitled and by wrongfully terminating her employment. Count four of the complaint charges all defendants with intentional infliction of emotional distress. Lastly, count five alleges that defendant Boswell intentionally interfered with plaintiff's prospective economic advantage by allegedly interfering with plaintiff's relationship with the corporate defendants.

The gist of plaintiff's complaint is that she was sexually harassed and assaulted by two employee supervisors at her job with a national travel agency corporation and its parent company. The corporations were headquartered in Delaware and Colorado and maintained an east coast regional office in Arlington, Virginia. Neither company maintained an office in the District of Columbia. Plaintiff asserts that when she rebuffed these unwanted sexual advances, she was thereafter retaliated against on the job. Most of the assault conduct is alleged to have occurred in the District of Columbia. The harassment conduct is alleged to have occurred in both the District and in Arlington, Virginia where the plaintiff primarily worked. Plaintiff also complains that as a direct result of her resistance to the sexual advances, she was denied a promotion to a job that would have placed her at an on-site assignment in the District of Columbia. The decision to deny the promotion was made in Virginia. Ultimately, plaintiff

complains that she was wrongfully terminated from her employment at a meeting held in the Virginia office.

B. *Motion to Dismiss Under Rule 12*

In their motion to dismiss, defendants argue that the discrimination counts should be dismissed because they do not pertain to employment related activities in the District of Columbia. This is belied by the allegations in the complaint, as well as plaintiff's affidavit in support of an opposition to the motion to dismiss, and the failure of the defendants to dispute plaintiff's allegations that many of the sexual activities about which plaintiff complains occurred in the District. There is no dispute that, as alleged on the face of the complaint, the corporate defendants are vicariously liable, on a *respondeat superior* theory, for the actions of the defendant Boswell. Many of the charged events are alleged to have taken place at Boswell's home in the District of Columbia. In addition, defendant Boswell, as agent for the corporate defendants, is alleged to have made numerous threatening and harassing phone calls from her home in the District of Columbia.

The determination of jurisdiction is a matter for the court to decide, rather than a jury. *Matthews v. Automated Business Systems & Services, Inc., et al.*, 558 A.2d 1175 (D. C. 1989); *Williamson v. Tucker*, 645 F.2d 404 (5th Cir.), *cert. denied*, 454 U.S. 897 (1981). A motion to dismiss, under Rule 12(b)(1), may assert a lack of jurisdiction in either one of two ways. It may raise a facial challenge to the complaint, or a factual challenge based upon matters outside of the complaint. Where the motion is a facial attack, the court must

assume the truth of the matters asserted in the complaint and determine the question of jurisdiction on that evidentiary foundation. Where the motion is a factual one, the court may not assume the truth of either party's allegation, but must instead review the evidentiary assertions of the parties contained in their affidavits and other documents. In some instances, it may even be necessary for the court to hold a hearing to determine the facts. *Williamson v. Tucker, supra; Matthew v. Automated Bus. Sys. & Serv., Inc., supra*, 558 A.2d at 1179 n. 7 and accompanying text.

In the instant case, the motion to dismiss is a factual attack. Nonetheless, there is no need to hold a hearing because plaintiff alleges acts of discrimination and sexual harassment that occurred in the District of Columbia which defendants do not dispute for purposes of this motion. Defendants argue instead that the acts complained of were private conduct perpetrated by the individual defendant which are not imputable to the corporate defendants. The corporate defendants argue further that they do no business in the District of Columbia that is the subject of this lawsuit and accordingly, they should not be required to submit to the jurisdiction of this court. On behalf of the defendant Boswell, the defendants argue that she cannot properly be sued under the DCHRA as an individual supervisory employee of the defendant corporations.

"If the events alleged in [plaintiff's] complaint occurred in the District of Columbia, they are subject to scrutiny under section 1-2512 [of the DCHRA], regardless of whether [plaintiff's] 'actual place of employment' was in [Virginia], the District, or both." *Id.* at 1180. Since the defendants do

not deny that some of the acts complained of are alleged to have occurred in the District of Columbia and since this court concludes that if they occurred as alleged, they establish a basis for jurisdiction in the District of Columbia, the motion to dismiss on these grounds as to the corporate defendants must be denied.

Likewise, as to defendant Boswell's claims that she is not a proper party to be sued for discrimination because she is not an employer as that term is defined, it appears that she can properly be sued as an aider and abettor. "If the [law firm employer] unlawfully discriminated against the plaintiff as alleged, then the partners who carried out the allegedly discriminatory acts aided and abetted the employer's discrimination, in violation of Section 1-2526 [of the DCHRA]." *Wallace v. Skadden, Arps, Slate, Meagher & Flom, et al.*, 715 A.2d 873, 888 (D.C.1998). Defendant Boswell is alleged to be a person who acted in the interest of her employer when she personally assaulted the plaintiff and when she thereafter threatened plaintiff with adverse employment actions if plaintiff declined Boswell's demands for attention and sexual favors. However, even if defendant Boswell is not an employer, as defined by the DCHRA, she is clearly accused of aiding and abetting the discrimination that she is alleged to have directly perpetrated. This makes her subject to the DCHRA under D.C. Code §1-2526.

Defendants further argue that the complaint should be dismissed because plaintiff fails to state a cause of action in either count four (intentional infliction of emotional distress) or count five (intentional interference with prospective economic advantage). This court has no doubt that the facial

allegations of the complaint are more than sufficient to state a cause of action on both of these claims.

C. *Forum Non Conveniens*

Defendants also seek dismissal on grounds of *forum non conveniens*. "The principle of *forum non conveniens* is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute." *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 507 (1947). In determining whether this is a convenient forum in which to try the instant case, this court must analyze both "private" and "public" factors that bear upon the question. In so doing, this court concludes that the matter should be dismissed on this basis.

Private factors that bear on the determination include: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process for the attendance of unwilling witnesses; (3) the cost of obtaining attendance of willing witnesses; (4) a view of the premises, if appropriate; (5) all other practical considerations of ease, expedience, and expense. "The private factors emphasize the burden and benefits accruing to the parties of litigating in the plaintiff's chosen forum, as compared to other potential fora." *Gulf Oil Corporation v. Gilbert, supra*; *Smith, et al., v Alder Branch Realty Limited Partnership*, 684 A.2d 1284, 1288 (D.C. 1995). In this case, the private factors militate strongly in favor of Virginia as the more appropriate forum. Although the District is proximate to Arlington, Virginia, it remains clear that most of the documents and sources of proof can be found only in Arlington at the regional headquarters of

the corporate defendants. Compulsory process is likely to involve witnesses primarily located in Virginia with the exception of defendant Boswell who lives in the District and the plaintiff who lives in Maryland. Other employee witnesses primarily work at the Arlington office. It would be easier and slightly less costly for these witnesses to attend a local trial in Arlington than one in the District of Columbia, although none would be beyond the compulsory process of this court. For example, witnesses could remain "on call" from their place of employment if the litigation were in an Arlington courtroom. There would be more delays if witnesses were similarly permitted to be on-call for a trial held in the District of Columbia. In terms of ease, expense and expedience, it appears that the more convenient forum is Virginia and plaintiff does not argue to the contrary.

Public facts that should be assessed by the court include: (1) the cost of congesting local courts with "foreign" litigation; (2) the burden on jurors to decide litigation unrelated to their community; (3) the interest a local jurisdiction has to decide local controversies; and (4) the unnecessary injection of problems of conflict of laws. The emphasis of the public factors is "the burden imposed on the forum in relation to its interest in the litigation, as well as the interest of other potential fora in addressing the dispute locally." *Id.* Again, when these factors are considered, it appears that Virginia has the closer ties to this litigation. Although some of the precipitating events of sexual assault are alleged to have occurred in the District of Columbia, others occurred in the Arlington office of the corporate defendants. The employment discrimination that allegedly emanated from those events was harassment, threats, and

repeated demands for favors that defendant Boswell allegedly made while at work in Virginia and on occasions from her home in D.C. The impact of the harassment is alleged to have affected plaintiff on her job which was primarily in Arlington, Virginia. The decisions not to promote plaintiff and to terminate her were made in Virginia or at corporate headquarters in Colorado. The corporate defendants were situated locally in Arlington, Virginia. Their business in the District of Columbia was limited, relative to the amount of business conducted in Virginia. All of plaintiff's personnel records, including employment documents are located in Virginia or Colorado.

Since the corporate defendant, Professional Travel, has an Arlington, Virginia presence, it would seem that the local interest in resolving the dispute would arise primarily in Virginia. Moreover, it appears that plaintiff's employment is governed by Virginia law. Although this jurisdiction has much experience determining issues of law from the surrounding jurisdictions, it appears unnecessary to inject problems of conflict of laws in this instant case when the most convenient forum is close by and available.

Plaintiff does not argue that Virginia is inconvenient to her. This court recognizes that "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Id.* 330 U.S. at 508. Here, the balance strongly favors resolution of this dispute in Virginia. This court cannot conclude that plaintiff's choice of forum is more convenient than an equally available forum in a neighboring jurisdiction. "'The strong presumption favoring plaintiff's choice of forum is even stronger when he is a

District of Columbia resident. (citations omitted). When the plaintiff is from another jurisdiction, however, it is much less reasonable to assume that his choice of a District of Columbia forum is convenient.' *Piper Aircraft v. Reyno*, 454 U.S. 235, 256 (1981). Accordingly, such plaintiff's choice deserves less deference." *Mills v. Aetna Fire Underwriters Insurance Company*, 511 A.2d 8, 10-11 (D.C. 1986).

Wherefore, for the reasons stated above, it is this __ day of October 1999

ORDERED that defendants' motion to dismiss the complaint pursuant to rules 12(b)(1) and 12(b)(6) be, and hereby is, **DENIED.** It is

FURTHER ORDERED that defendants' motion to dismiss for *forum non conveniens* be, and the same hereby is, **GRANTED.** This matter is hereby dismissed with prejudice on the grounds that the District of Columbia is an inconvenient forum.

s/ Susan R. Holmes Winfield
Susan R. Holmes Winfield
Associate Judge

/Signed In Chambers/
October 27, 1999

APPENDIX D — ORDER OF THE DISTRICT OF COLUMBIA COURT OF APPEALS DENYING PETITION FOR REHEARING DATED AUGUST 2, 2001

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 99-CV-1495
CA5195-99

TOMSENE BLAKE,

Appellant,

v.

PROFESSIONAL TRAVEL CORPORATION, ET AL.,

Appellees.

BEFORE: Wagner, Chief Judge; Terry, Steadman, *Schwelb, *Farrell, Ruiz, *Reid, Glickman, and Washington, Associate Judges.

ORDER

On consideration of appellees' petition for rehearing or rehearing en banc, and the response thereto, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

APPENDIX E — COMPLAINT DATED AND FILED JULY 23, 1999

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

Civil Action No.: 99-0005195

TOMSENE BLAKE
11734 SOUTH LAUREL DRIVE
APT. 3-B
LAUREL, MARYLAND 20708,

PLAINTIFF,

v.

PROFESSIONAL TRAVEL CORPORATION d/b/a PROFESSIONAL TRAVEL, NAVIGANT INTERNATIONAL
84 INVERNESS CIRCLE EAST
ENGLEWOOD, COLORADO 80112
(8)28:GENE OVER, VICE PRESIDENT AND GENERAL COUNSEL
NAVIGANT INTERNATIONAL INC.
84 INVERNESS CIRCLE EAST
ENGLEWOOD, COLORADO 80112,

and

Appendix E

NAVIGANT INTERNATIONAL, INC.
84 INVERNESS CIRCLE EAST
ENGLEWOOD, COLORADO 80112
(8) 2 8 :GENE OVER, VICE PRESIDENT
AND GENERAL COUNSEL
84 INVERNESS CIRCLE EAST
ENGLEWOOD, COLORADO 80112,

and

SARAH K. BOSWELL
1860 3rd STREET, N.W.,
WASHINGTON, D.C. 20001,

DEFENDANTS.

COMPLAINT

1. This Court has jurisdiction of this matter pursuant §§ 1-2501, *et seq.*, 11-921, 13-422 and 13-423 of the District of Columbia Code.

FACTS COMMON TO ALL COUNTS

2. Plaintiff Tomsene Blake is a female adult citizen of the State of Maryland.

3. Defendant Sarah K. Boswell is a female adult citizen of the District of Columbia.

4. Defendant Professional Travel Corporation d/b/a Professional Travel, Navigant International ("Professional

Travel"), is a foreign corporation doing business in the District of Columbia, whose corporate headquarters are located in Englewood, Colorado.

5. Upon information and belief, Defendant Navigant International, Inc. ("Navigant") is a foreign corporation doing business in the District of Columbia, and, upon information and belief, is the parent company of Professional Travel, whose corporate headquarters are located in Englewood, Colorado.

6. Upon information and belief, Professional Travel and Navigant have interrelated operations; centralized control of labor policy and relations in Englewood, Colorado; common management; and, common ownership and/or financial control.

7. Upon information and belief, Navigant controls the day-to-day employment decisions of Professional Travel.

8. Defendants Professional Travel and Navigant are large travel management companies which offer corporate and individual clients access to a wide range of travel-related products, services and technologies.

9. Defendant Professional Travel maintains many on-site offices and personnel at law firms, companies and other businesses located within the District of Columbia.

10. On or about May 27, 1997, Plaintiff began working for Professional Travel and Navigant in their Arlington, Virginia office as a professional travel agent, at an annual

salary of $32,000.00. Plaintiff was interviewed and hired by Defendant Boswell.

11. Plaintiff's duties as a professional travel agent included, but were not limited to, coordinating, servicing and attending to the travel needs of Professional Travel's various clientele.

12. Plaintiff's primary client contacts and responsibilities, during the course of her employment with Professional Travel, included, but were not limited to, The Federation of State Board Physical Therapy ("The Federation"), SEIU (Service Employee International Union); United Way; Deloitte and Touche; MRL; and, Patton Boggs LLP.

13. In or about July 1998, Plaintiff became the primary designated travel agent and contact for The Federation.

14. Throughout Plaintiff's employment with Defendants Professional Travel and/or Navigant, she diligently, consistently and conscientiously performed her duties as a professional travel agent.

15. Defendant Boswell is the Director of Operations for Professional Travel in its Arlington, Virginia office.

16. Defendant Boswell had the authority and power, on behalf of Professional Travel, to hire and fire any and all Professional Travel employees for the Eastern Region, including any and all Professional Travel Employees working in the District of Columbia.

Appendix E

17. At all times relevant hereto, Defendant Boswell was acting in her capacity as the agent, servant and/or employee of the Defendants Professional Travel and/or Navigant.

18. Plaintiff worked off-site for Professional Travel at the offices of Hogan & Hartson L.L.P., in the District of Columbia, for the period late May to late June, 1998.

19. Plaintiff worked off-site for Professional Travel at the offices of Patton Boggs LLP in the District of Columbia several times in or about the Winter of 1997-1998

20. On or about May 27, 1998, Plaintiff received an annual review from Professional Travel which affirmed her record of excellence with Professional Travel and resulted in a salary increase to approximately $34,000.00.

21. Phyllis Reagan is a corporate Vice President at Professional Travel's Arlington, Virginia office. Ms. Reagan's responsibilities include, but are not limited to, the day-to-day operations at that office. Ms. Reagan is Professional Travel's top corporate official and/or manager at its Arlington, Virginia office.

22. At all times relevant to this action, Phyllis Reagan was acting in her capacity as the agent, servant and/or employee of the Defendants Professional Travel and/or Navigant.

23. In or about June 1998, on a Friday evening, Phyllis Reagan initiated a conversation with Plaintiff at a bar and restaurant which was explicitly sexual in nature, including,

but not limited to, questions and comments regarding Plaintiff's sexuality, Plaintiff's sexual preferences and sexual habits, and other inappropriate, highly personal and embarrassing inquiries regarding Plaintiff's sexual status.

24. Employees of Professional Travel were present during the conversation referenced in paragraph 23.

25. Plaintiff was, at all times during the conversation and comments referenced in paragraph 23, uncomfortable, embarrassed and humiliated. The Professional Travel employees present taunted and teased Plaintiff about the intensely personal and sexual nature of Phyllis Reagan's comments.

26. At a time out of the hearing of the Professional Travel employees, at the aforementioned Friday night event, Phyllis Reagan told Plaintiff that she was sexually attracted to Plaintiff.

27. Plaintiff clearly and categorically rejected the sexual overtures of Phyllis Reagan at the Friday evening event referenced in paragraphs 23-26.

28. In a telephone call with Phyllis Reagan the day after the Friday night event referenced in paragraphs 23-26, Plaintiff asked Ms. Reagan if she was going to be fired from her job with Professional Travel.

29. Phyllis Reagan indicated that Plaintiff would not be fired, and then requested that Plaintiff have lunch with her the following day, a Sunday.

30. During the Sunday lunch, Phyllis Reagan related personal information of a sexual nature about herself, and asked Plaintiff if Plaintiff was sexually attracted to her. Plaintiff responded that she was not interested in any type of sexual relationship with Ms. Reagan.

31. Phyllis Reagan and Plaintiff then drove back to Professional Travel's office in Arlington, where Plaintiff's car was located, at which time night had fallen. Ms. Reagan indicated that she needed to retrieve something out of the office. Plaintiff accompanied Ms. Reagan into Professional Travel's office.

32. While standing in the office, Plaintiff was asked by Ms. Reagan whether Ms. Reagan was going to get a kiss goodnight. Without waiting for Plaintiff's response, and in the same instant, Ms. Reagan proceeded to kiss Plaintiff on the mouth in a sexual manner.

33. Plaintiff pulled away from Ms. Reagan, and indicated that she needed to leave the premises.

34. At the front door to Professional Travel's offices, Ms. Reagan again kissed Plaintiff in a sexual manner, and further indicated to Plaintiff her sexual desire for Plaintiff. Ms. Reagan then indicated that she would stop the sexual kissing because, in Ms. Reagan's view, it was the first "date" as between Plaintiff and Ms. Reagan. Plaintiff left the building at that time.

35. Phyllis Reagan indicated to Plaintiff at a later time that she was confused about her sexuality, and apologized

for the sexual incident at Professional Travel's offices. No further sexual contact was directed at Plaintiff by Phyllis Reagan.

36. Plaintiff is a registered Massage Therapist with a degree from the Baltimore School of Massage Therapy and Holistic Health Center.

37. Defendant Boswell made an appointment with Plaintiff for a non-sexual massage at Defendant's home in the District of Columbia on or about July 26, 1998.

38. After completion of the non-sexual massage by Plaintiff, Defendant Boswell invited Plaintiff to lunch at the Velocity Grill in the District of Columbia.

39. Upon return to Defendant Boswell's home, Defendant Boswell proceeded to fondle, caress and touch Plaintiff's breasts and genitals, despite repeated demands from Plaintiff that Defendant immediately stop said touching.

40. The acts of fondling and touching by Defendant Boswell against the person of Plaintiff ultimately resulted in sexual acts as between Defendant Boswell and Plaintiff, which acts included, but were not limited to, cunnilingus and vaginal digital stimulation.

41. Upon completion of the aforementioned sexual acts as between Defendant Boswell and Plaintiff, Plaintiff immediately left Defendant's home without saying a word.

42. After the sexual acts which took place on or about July 26, 1998, Plaintiff repeatedly indicated to Defendant

Boswell that she did not want a sexual relationship with Defendant Boswell.

43. After Plaintiff indicated to Defendant Boswell that she did not want a sexual relationship, Defendant Boswell began to intimidate, harass, and humiliate Plaintiff in front of other Professional Travel employees.

44. In or about Winter 1998-1999, several management level positions became available at Professional Travel: (a) on-site manager at the National Science Foundation ("NSF") in Virginia; (b) on-site manager at Hogan & Hartson L.L.P. in Washington, D.C.; (c) on-site manager at Skadden, Arps, Slate, Meagher & Flom, LLP in Washington, D.C.; and, (d) Account Manager at Professional Travel's Arlington, Virginia office.

45. In or about Winter 1998-1999, Plaintiff applied to Defendant Boswell for the aforementioned positions at NSF and Account Representative at Professional Travel.

46. Plaintiff was well-qualified and duly able to perform the aforementioned NSF and Account Representative positions. Defendant Boswell encouraged and/or requested that Plaintiff apply for the NSF and Account Representative positions.

47. On or about February 20, 1999, Defendant Boswell invited Plaintiff out to a bar and restaurant in Washington, D.C. to discuss the aforementioned managerial-level positions at Professional Travel.

Appendix E

48. Upon concluding the discussion of the managerial-level positions referenced in paragraph 44, Defendant Boswell requested that Plaintiff come to her home in the District of Columbia.

49. While at Defendant Boswell's home on or about February 20, 1999, Defendant Boswell appeared before Plaintiff clad in a negligee, thereafter mounting Plaintiff and proceeding to fondle, caress, kiss and touch Plaintiff's breast, genitals and person.

50. Plaintiff pushed Defendant Boswell off of her person during the course of the sexual touching described in paragraph 49, and immediately left Defendant's home.

51. After the sexual incident which occurred on or about February 20, 1999, at Defendant Boswell's home, Plaintiff was denied by Defendant Boswell the managerial-level positions for which she had applied.

52. During the period commencing on or about July 26, 1998 through and including June 30, 1999, Defendant Boswell continued to verbally harass and abuse Plaintiff with a series of personal conversations and phone calls at Professional Travel's offices in Arlington, Virginia, as well as at Plaintiff's home.

53. During the period commencing on or about July 26, 1998 through and including June 30, 1999, Defendant Boswell continued to subtly and overtly pressure Plaintiff for sexual favors, which demands were consistently and definitively refused by Plaintiff.

Appendix E

54. During the period commencing on or about July 26, 1998 through and including June 30, 1999, Defendant Boswell continued to demand sexual favors accompanied by implicit and explicit threats concerning Plaintiff's employment status with Professional Travel.

55. During the period commencing on or about July 26, 1998 through and including June 30, 1999, Defendant Boswell continued to demand sexual favors accompanied by implicit and explicit promises of preferential treatment with regard to Plaintiff's employment status with Professional Travel.

56. During the period commencing on or about July 26, 1998 through and including June 30, 1999, Defendant Boswell continued to ask Plaintiff out to lunch during the workweek, and demanded that Plaintiff spend time with her on overnight camping, climbing and skiing trips.

57. Plaintiff acquiesced in several such requests for lunch dates, as well as overnight camping, climbing and skiing trips, because Defendant Boswell indicated to Plaintiff, explicitly and implicitly, that she needed to do so to keep her job, and for other reasons.

58. Defendant Boswell's demands, commencing on or about July 26, 1998 through and including June 30, 1999, for lunch dates, and other demands for Plaintiff's presence on overnight camping, climbing and skiing trips, became so frequent and insistent, that several Professional Travel employees ultimately complained to Phyllis Reagan regarding the number and length of time spent on such lunch dates by

Plaintiff and Defendant Boswell, thereby creating an unreasonable interference with Plaintiff's ability to effectively perform her job and/or interfering with Plaintiff's work performance generally.

59. During the time period commencing on or about July 26, 1998 through and including June 30, 1999, several Professional Travel employees began treating Plaintiff in a hostile and rude manner because, upon information and belief, these employees were possessed of the belief and/or perception that Plaintiff was receiving preferential treatment in the workplace from Defendant Boswell, which hostile and rude treatment unreasonably interfered with Plaintiff's ability to effectively perform her job and/or interfered with Plaintiff's work performance generally.

60. On or about May 27, 1999, Plaintiff was due to receive her annual review by Defendant Boswell, which review Defendant postponed.

61. Defendant Boswell continued, during the period May 27, 1999 to June 30, 1999, to explicitly pressure Plaintiff to go away with her on an overnight trip, specifically planning one such trip for July 1, 1999, which demands Plaintiff consistently and categorically refused.

62. On or about June 1, 1999, Plaintiff directly, unequivocally and finally told Defendant Boswell that she did not want and had never wanted a sexual relationship with her; that she would never again go away with her on any overnight trips of any kind; that she would never again go out with Defendant Boswell on lunch dates or dates at any

time or place; and that Defendant Boswell should forever and finally cease from pressuring Plaintiff for sexual favors.

63. On or about June 25, 1999, Plaintiff had a conversation with a liaison representative from The Federation, who indicated to Plaintiff that The Federation had given notice to Professional Travel via E-mail transmission that The Federation was severing their current relationship with Professional Travel and utilizing the services of another agency for 90 days.

64. The Federation's liaison representative further told Plaintiff that The Federation's decision had nothing whatsoever to do with Plaintiff's personal performance on this account, and that the E-mails sent to Professional Travel reflected same.

65. On or about June 30, 1999, at a meeting attended by Plaintiff, Defendant Boswell and Lynette Heiges, who was the Human Resources Representative for Professional Travel in Arlington, Defendant Boswell handed Plaintiff a written termination letter which indicated that Plaintiff had been put on probation since May 19, 1999 due to her personal inability to effectively service The Federation's account.

66. The aforementioned termination letter further based Plaintiff's termination on Professional Travel's loss of The Federation account and indicated that Plaintiff's personal performance since May 19, 1999 was wholly to blame for said loss.

67. Plaintiff had never, at any time prior to June 30, 1999, been informed by anyone at Professional Travel

that she was being put on probation regarding The Federation account.

68. Phyllis Reagan joined the June 30, 1999 meeting when Lynette Heiges indicated aloud to Plaintiff and Defendant Boswell that no probation letter was in Plaintiff's personnel file.

69. Plaintiff confronted Defendant Boswell at the June 30, 1999 termination meeting, and vehemently denied the veracity of the allegations of the June 30, 1999 termination letter authored and engineered by Defendant Boswell.

70. Plaintiff demanded, at the June 30, 1999 meeting, to see the probation letter in her personnel file. Phyllis Reagan inquired of Ms. Heiges as to that letter and was informed it wasn't in Plaintiff's personnel file.

71. Plaintiff further demanded at that time to see a copy of the E-mail transmission from The Federation to Professional Travel severing its relationship with Professional Travel. That demand was denied by Defendant Boswell and Phyllis Reagan.

72. Ms. Reagan initiated a telephone call, during the June 30, 1999 meeting, to Professional Travel's Englewood, Colorado headquarters to inquire of Kristin Monasmith, Human Resources Representative in Englewood, as to whether a probation letter was in Plaintiff's file. Ms. Monasmith informed Ms. Reagan that no such letter was in Plaintiff's file.

Appendix E

73. Pursuant to the above-referenced conversations with Ms. Heiges and Ms. Monasmith regarding the alleged probation letter in Plaintiff's file, Ms. Reagan ended the June 30, 1999 meeting by telling Plaintiff that "we have a problem", and requesting that Plaintiff wait to hear from her further. At all times on June 30, 1999, Ms. Reagan indicated to Plaintiff that she was under the impression that Plaintiff was on probation regarding The Federation account.

74. After the meeting of June 30, 1999, Plaintiff and Lynette Heiges again called Kristin Monasmith in Englewood, Colorado, out of the presence of Defendant Boswell and Phyllis Reagan. Ms. Monasmith again confirmed that no letter of probation regarding Plaintiff and The Federation account was in Plaintiff's file.

75. Phyllis Reagan left a voice message on Plaintiff's home answering machine on or about July 6, 1999, indicating that she was going to abide by Defendant Boswell's decision to terminate Plaintiff.

76. Accordingly, Plaintiff was wrongfully terminated against her will pursuant to a letter from Defendant Boswell dated June 30, 1999, at a meeting attended by Plaintiff, Phyllis Reagan, Defendant Boswell, and Lynette Heiges, which decision was confirmed via a telephone message left on Plaintiff's home answering machine by Phyllis Reagan on or about July 6, 1999.

Appendix E

COUNT I
(D.C. Human Rights Action-Sexual Harassment)

77. Plaintiff adopts and incorporates as if fully set forth herein by reference paragraphs 1 through 76 herein.

78. Defendants' actions, commencing in or about June 1998 through and including June 30, 1999, against Plaintiff constitute unlawful discrimination and/or harassment against her on the basis of her sex in violation of the District of Columbia Human Rights Act, D.C. Code §§ 1-2501, *et seq.* (1981).

79. Defendants' discriminatory actions included, but were not limited to: the ongoing, persistent and insistent demands by Defendant Boswell for sexual favors from Plaintiff commencing on or about July 26, 1998 through and including June 30, 1999; and, the ongoing, persistent and insistent demands by Defendant Boswell that Plaintiff accompany her on lunch dates and on other occasions, on overnight hiking, camping and skiing trips.

80. Defendants' discriminatory actions further included, but were not limited to, acts of retaliation as follows: (a) in or about the Winter of 1998-1999, Plaintiff was denied managerial-level positions at Professional Travel for which she had applied, by Defendant Boswell, in retaliation for her refusal to engage in sexual acts with Defendant Boswell on or about February 20, 1999, and for Plaintiff's refusal to engage in Defendant Boswell's ongoing demands for sexual favors, and other inappropriate requests as set forth herein, for the period commencing on or about July 26, 1998 through

and including June 30, 1999; (b) Plaintiff was wrongfully terminated against her will by Defendants for her refusal of Defendant Boswell's and/or Phyllis Reagan's demands for sexual favors, and other inappropriate requests as set forth herein, for the period commencing in or about June 1998 through and including June 30, 1999.

81. Defendants' discriminatory actions were willful and malicious, knowingly in violation of civil rights laws, carried out with reckless disregard of Plaintiff's rights, and aggravated by evil motive and malice.

82. As a result of Defendants' wrongful conduct, and through no fault on the part of Plaintiff, Plaintiff sustained and will in the future sustain loss of substantial income, benefits and other compensation, suffered permanent diminishment of earning capacity and career advancement, and sustained and will in the future sustain economic harm, reputational harm, humiliation, and pain and suffering.

WHEREFORE, Plaintiff respectfully requests the Court to enter judgment in her favor and against the Defendants, jointly and severally, as follows: (a) declaratory judgment that Defendants violated the civil rights laws cited herein; (b) injunctive relief prohibiting Defendants from engaging in such violations and requiring that Plaintiff be reinstated to her former position; (c) compensatory damages in the amount of $1,000,000.00 for loss of income, humiliation, and pain and suffering and interest thereunder; (d) punitive damages in the amount of $7,000,000.00; (e) reasonable attorneys' fees, costs and expenses incurred in this action; and, (f) such other and further additional relief as the Court deems to be proper, just and equitable under the circumstances.

Appendix E

COUNT II
(D.C. Human Rights Action-Hostile Work Environment)

83. Plaintiff adopts and incorporates by reference as if fully set forth herein paragraphs 1 through 82 herein.

84. Defendants' actions, commencing in or about June 1998 through and including June 30, 1999, against Plaintiff constitute unlawful discrimination and/or harassment in the form of a hostile working environment on the basis of her sex in violation of the District of Columbia Human Rights Act, D.C. Code §§ 1-2501, *et seq.* (1981).

85. Defendants' actions, commencing in or about June 1998 through and including June 30, 1999, created a hostile and abusive working environment in that: (a) Plaintiff was subjected to unwelcome sexual harassment in the form of sexual advances, demands and/or requests for sexual favors, and/or other verbal and physical conduct of a sexual nature as complained of herein; (b) the harassment complained of herein was based upon sex; (c) the sexual harassment complained of herein had the effect of unreasonably interfering with Plaintiff's work performance and creating an intimidating, hostile, and/or offensive working environment; (d) Defendants had actual knowledge of and participated in the sexual harassment complained of herein.

86. Defendants' discriminatory actions were willful and malicious, knowingly in violation of civil rights laws, carried out with reckless disregard of Plaintiff's rights, and aggravated by evil motive and malice.

87. As a result of Defendants' wrongful conduct, and through no fault on the part of Plaintiff, Plaintiff sustained and will in the future sustain loss of substantial income, benefits and other compensation, suffered permanent diminishment of earning capacity and career advancement, and sustained and will in the future sustain economic harm, reputational harm, humiliation, and pain and suffering.

WHEREFORE, Plaintiff respectfully requests the Court to enter judgment in her favor and against the Defendants, jointly and severally, as follows: (a) declaratory judgment that Defendants violated the civil rights laws cited herein; (b) injunctive relief prohibiting Defendants from engaging in such violations and requiring that Plaintiff be reinstated to her former position; (c) compensatory damages in the amount of $1,000,000.00 for loss of income, humiliation, and pain and suffering and interest thereunder; (d) punitive damages in the mount of $7,000,000.00; (e) reasonable attorneys' fees, costs and expenses incurred in this action; and, (f) such other and further additional relief as the Court deems to be proper, just and equitable under the circumstances.

COUNT III
(D.C. Human Rights Action-Retaliation)

88. Plaintiff adopts and incorporates by reference paragraphs 1 through 87 as if fully set forth herein.

89. Defendants unlawfully discriminated against Plaintiff by denying Plaintiff's request to be considered for managerial-level positions in or about Winter 1998-1999,

after Plaintiff has rebuffed and refused Defendant Boswell's sexual advances of February 20, 1999, and/or Phyllis Reagan's sexual overtures in or about June 1998; and Plaintiff's refusal of the continuing sexual demands and advances by Defendant Boswell upon Plaintiff commencing on or about July 26, 1998 through and including June 30, 1999.

90. After Plaintiff refused to provide sexual favors to Defendant Boswell, Defendant Boswell subjected Plaintiff to continued harassing and intimidating behavior in the form of repeated dates for lunch, unwanted physical touching and caressing of Plaintiff's person, repeated demands by Defendant Boswell that Plaintiff accompany her on overnight trips, and in other ways.

91. Defendants discharged Plaintiff in retaliation against her for refusing to acquiesce to the demands for sexual favors of Defendant Boswell and/or Phyllis Reagan.

92. Defendants' actions as alleged herein constituted retaliation, threats and interference with the Plaintiff's exercise and enjoyment of the rights set forth in the D.C. Human Rights Act, D.C. Code §§ 1-2501 *et seq.* (1981), and specifically D.C. Code §§ 1-2525 and 1-2511 and 1-2512.

93. Defendants' discriminatory actions were willful and malicious, knowingly in violation of civil rights laws, carried out with reckless disregard of Plaintiff's rights, and aggravated by evil motive and malice.

94. As a result of Defendants' wrongful conduct, and through no fault on the part of Plaintiff, Plaintiff sustained

and will in the future sustain loss of substantial income, benefits and other compensation, suffered permanent diminishment of earning capacity and career advancement, and sustained and will in the future sustain economic harm, reputational harm, humiliation, and pain and suffering.

WHEREFORE, Plaintiff respectfully requests the Court to enter judgment in her favor and against the Defendants, jointly and severally, as follows: (a) declaratory judgment that Defendants violated the civil rights laws cited herein; (b) injunctive relief prohibiting Defendants from engaging in such violations and requiring that Plaintiff be reinstated unconditionally to her former position; (c) compensatory damages in the amount of $1,000,000.00 for loss of income, humiliation, and pain and suffering and interest thereunder; (d) punitive damages in the amount of $7,000,000.00; (e) reasonable attorneys' fees, costs and expenses incurred in this action; and, (f) such other and further as this Court deems to be proper, just and equitable under the circumstances.

COUNT IV
(Intentional Infliction of Emotional Distress)

95. Plaintiff adopts and incorporates by references paragraphs 1 through 94 as if fully set forth herein.

96. Plaintiff was subjected to unwanted sexual advances from Phyllis Reagan in or about June 1998 in the form of sexual kissing upon Plaintiff's person.

97. Plaintiff was subjected to unwanted sexual advances in the District of Columbia and sexual contact with and by

Defendant Sarah Boswell in the form of fondling, caressing, kissing and touching Plaintiff's breasts, genitals and person.

98. Plaintiff was subjected to a hostile work environment by Defendants in the form of unwanted demands for sexual favors; demands for lunch and dinner dates; demands for overnight trips, and personal, inappropriate phone calls during work hours; hostility from co-workers which unreasonably interfered with Plaintiff's work performance and/or Plaintiff's ability to effectively perform her job; and in other ways.

99. Defendants wrongfully terminated Plaintiff on or about June 30, 1999 in retaliation for her refusal to acquiesce to the demands of Defendant Boswell and/or Phyllis Reagan for sexual favors and sexual activity.

100. Defendants, in conjunction with Phyllis Reagan, wrongfully terminated Plaintiff based upon a condition of alleged probation and poor performance with one of Defendants' clients, The Federation of State Board Physical Therapy, which condition of probation was false, mendacious, without basis and wholly concocted to form a bogus reason for terminating Plaintiff.

101. Defendants, in conjunction with Phyllis Reagan, knew or should have known that the reasons set forth by Defendant Boswell for Plaintiff's termination were false and without basis as no letter of probation was in Plaintiff's personnel file as of June 30, 1999 and Plaintiff was never informed that she was on probation as to The Federation.

102. Defendants' actions were extreme and outrageous which intentionally and/or recklessly caused the Plaintiff severe emotional distress, humiliation, and pain and suffering.

103. Defendants' actions in this regard were willful and malicious, carried out with reckless disregard of Plaintiff's rights, and aggravated by evil motive and malice.

104. As a result of Defendants' wrongful conduct, and through no fault on the part of Plaintiff, Plaintiff sustained and will in the future sustain emotional distress, humiliation, and pain and suffering.

WHEREFORE, Plaintiff respectfully requests the Court to enter judgment in her favor and against the Defendants, jointly and severally, as follows: (a) compensatory damages in the amount of $1,000,000.00 for emotional distress, humiliation, and pain and suffering; (b) punitive damages in the amount of $7,000,000.00; (c) reasonable attorneys' fees, costs and expenses incurred in this action; and, (d) such other and further additional relief as the Court deems to be proper, just and equitable under the circumstances.

COUNT V
(Intentional Interference with Prospective Economic Advantage)

105. Plaintiff adopts and incorporates by reference paragraphs 1 through 104 as if fully set forth herein.

106. During the period from May 27, 1997 to June 30, 1999, there existed a valid business relationship as between

the Plaintiff and Defendants Professional Travel and/or Navigant International, Inc.

107. Defendant Sarah K. Boswell knew of the aforementioned valid business relationship as between Plaintiff and Defendants Professional Travel and/or Navigant International, Inc.

108. Defendant Sarah K. Boswell, commencing on or about July 26, 1998 through and including June 30, 1999, wrongfully and without justification intentionally interfered with the Plaintiff's valid business relationship as set forth in paragraphs 105-107, which intentional interference induced and/or caused a breach in and termination of said business relationship.

109. In the absence of the wrongful acts of the Defendant Sarah K. Boswell, it is reasonably probable that the Plaintiff would have realized numerous economic advantages and benefits resulting from Plaintiff's valid business relationship with Defendants Professional Travel and/or Navigant.

110. As a result of Defendant Sarah K. Boswell's unlawful activity and wrongful conduct, and through no fault on the part of Plaintiff, Plaintiff sustained and will in the future sustain loss of substantial income, benefits and other compensation, suffered permanent diminishment of earning capacity and career advancement, and sustained and will in the future sustain economic harm, reputational harm, humiliation, and pain and suffering.

WHEREFORE, Plaintiff respectfully requests the Court to enter judgment in her favor and against the Defendant

Sarah K. Boswell, individually, as follows: (a) compensatory damages in the amount of $1,000,000.00; (b) punitive damages in the amount of $7,000,000.00; (c) reasonable attorneys' fees, costs and expenses incurred in this action; and, (d) such other and further relief as this Court deems to be proper, just and equitable under the circumstances.

Respectfully submitted,

HAMILTON AND HAMILTON, LLP

s/ Patrick J. Massari
Patrick J. Massari
D.C. Bar No. 418886
Richard E. Jordan
D.C. Bar No. 353763
1775 Pennsylvania Avenue, N.W.
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(202) 463-8282
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JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable herein.

s/ Patrick J. Massari
Patrick J. Massari

APPENDIX F— AFFIDAVIT OF LYNNETTE J. HEIGES DATED AUGUST 26, 1999

**IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

Civil Action
No. 99-CA-005195
Judge Susan R. Winfield
Calendar No. 13
Next Event: Initial Conference
October 22, 1999

TOMSENE BLAKE
11734 South Laurel Dr.,
Apt. 3-B
Laurel, MD 20708

Plaintiff,

v.

PROFESSIONAL TRAVEL CORP. d/b/a PROFESSIONAL TRAVEL, NAVIGANT INTERNATIONAL
84 Inverness Circle East
Englewood, Colorado 80112,

and

NAVIGANT INTERNATIONAL, INC.
84 Inverness Circle East
Englewood, Colorado 80112,

and

Appendix F

SARAH K. BOSWELL
1860 3rd St., N.W.
Washington, D.C. 20001

Defendants.

AFFIDAVIT OF LYNNETTE J. HEIGES

I, Lynnette J. Heiges, upon my oath, do hereby declare and state:

1. I am over the age of eighteen (18), of sound mind, and make the following statements based upon my personal knowledge.

2. I was employed by Professional Travel Corporation ("Professional Travel") as a Sales/Human Resources Support Administrator from June 11, 1997 until July 23, 1999.

3. Professional Travel is a Colorado corporation with its corporate headquarters at 84 Inverness Circle East, Englewood, Colorado 80112.

4. Professional Travel's Eastern Regional Headquarters is located at 4601 North Fairfax Drive, Arlington, VA.

5. Navigant International, Inc. ("Navigant") maintains its sole business office and corporate headquarters at 84 Inverness Circle East, Englewood, Colorado. Neither Navigant nor Professional Travel own or lease real property in the District of Columbia.

Appendix F

6. On information and belief, Plaintiff Tomsene Blake ("Plaintiff" or "Blake") resides at 11734 South Laurel Drive, Apt. 3-B, Laurel, Maryland, which is located in Prince George's County, Maryland.

7. All of Professional Travel's east coast employees, approximately fifty individuals in all, are employed and based at the Company's Arlington, Virginia Regional Headquarters.

8. Professional Travel's east coast employees predominately serve governmental agencies, with a smaller portion serving private customers. During her employment, Blake primarily worked with Professional Travel's private customers.

9. Of Professional Travel's approximately 50 east coast employees, only four (4) are assigned to private customer locations in the District of Columbia. Eight (8) Professional Travel employees work on-site with government accounts in the District of Columbia. Thus, the vast majority of Professional Travel's employees work exclusively in Virginia and have no work related contacts with the District of Columbia.

10. While employed with Professional Travel as a Senior Travel Counselor, Blake worked and was based out of Professional Travel's Eastern Regional Headquarters in Arlington, Virginia.

11. Blake's job duties with Professional Travel included assisting travelers calling in to the Arlington office with travel reservations and other travel arrangements. Blake was also

required periodically to travel on-site with corporate clients in Virginia, as ordered by her supervisors in Arlington.

12. During the time relevant to Blake's Complaint, Blake only worked on-site in Virginia, mainly at Microstrategy in Vienna, SAGA in Reston, and the National Science Foundation in Arlington. During this same time, Blake explicitly refused to accept on-site assignments in the District of Columbia.

13. Blake was never assigned on-site work with Professional Travel's government accounts in the District of Columbia.

14. None of the "primary client contacts" listed at paragraph 12 of Plaintiff's Complaint required her to work on-site in the District of Columbia.

(a) The SEIU account was the largest account handled out of Professional Travel's Arlington Headquarters, and all Professional Travel counselors based in Arlington were assigned to take calls from the SEIU when they came into that office from around the nation. Professional Travel does not send any counselors on-site to the SEIU.

(b) On information and belief, the United Way is located in Alexandria, Virginia.

(c) Blake was not the designated agent for the Deloitte & Touche account. Moreover, Deloitte & Touche is not an on-site account, but is served at the Arlington Regional Headquarters.

(d) On information and belief, MRL is located in Reston, Virginia.

(e) Blake was not the designated agent on the Patton Boggs LLP account. Moreover, Patton Boggs LLP is not now an on-site account, but is served at the Arlington Regional Headquarters.

(f) On information and belief, the Federation of State Boards of Physical Therapy is located at 509 Wythe St., Alexandria, Virginia.

15. While she was employed with Professional Travel, Blake's facsimile, computer e-mail, business telephone and voicemail answering machine were all located at Professional Travel's Eastern Regional Headquarters in Arlington, Virginia. In connection with her employment, Blake had no work contact number, facsimile number, e-mail or answering machine located in the District of Columbia. All of Blake's Professional Travel supervisors were based out of Professional Travel's Eastern Regional Headquarters in Arlington, Virginia.

16. All four manager positions allegedly sought by Plaintiff, and described in paragraph 44 of the Complaint, would have been based out of Arlington, Virginia and two were on-site positions in Virginia.

(a) On information and belief, the National Science Foundation is located at 4201 Wilson Boulevard, Arlington, Virginia.

(b) The Professional Travel Account Manager position would have been located at the Company's Eastern Regional Headquarters in Arlington, Virginia.

(c) The two remaining managerial positions, at Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps") and Hogan & Hartson LLP, although requiring some on-site work in the District of Columbia, would have been based out of Arlington, Virginia.

17. The hiring decisions with regard to the managerial positions at National Science Foundation, Skadden Arps, Hogan & Hartson and Professional Travel, were made by individuals located in Professional Travel's Arlington Regional Headquarters.

18. The hiring decision regarding the managerial position with the National Science Foundation was not made until late spring 1998 and the hiring decision regarding the alleged Professional Travel Account Manager position was not made until January of 1999.

19. The announcements delivered to the individuals who obtained the positions were issued from Professional Travel's Arlington Regional Headquarters.

20. None of the individuals with decision making authority regarding Blake's alleged requests for promotion are located in the District of Columbia.

21. Blake's personnel file, payroll records and other documents that may be relevant to this litigation are located

either in Arlington, Virginia, or Englewood, Colorado. No documents relevant to this litigation are located in the District of Columbia.

s/ Lynnette J. Heiges
Lynnette J. Heiges

STATE OF MARYLAND, MONTGOMERY COUNTY/CITY

I, a Notary Public of such County/City, certify that this day personally appeared before me in such County/City Lynnette J. Heiges, who thereupon made oath that all statements contained in this affidavit are true and correct to the best of her knowledge and belief.

Given under my hand this 26 day of August, 1999.

s/ [illegible]
Notary Public

My Commission expires July 1, 2002.

APPENDIX G — AFFIDAVIT OF TOMSENE BLAKE DATED SEPTEMBER 7, 1999

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

Civil Action No.: 99-CA-005195
Judge Susan R. Winfield
Calendar No. 13
Next Event: Initial Conf.
October 22, 1999

TOMSENE BLAKE,

Plaintiff,

v.

PROFESSIONAL TRAVEL CORP, d/b/a PROFESSIONAL TRAVEL, NAVIGANT INTERNATIONAL, E704.T

Defendants.

AFFIDAVIT OF TOMSENE BLAKE

District of Columbia, SS:

TOMSENE BLAKE, being first duly sworn, states that:

1. I am over twenty-one (21) years of age, of sound mind and make the following statements based upon my personal knowledge.

2. I worked on-site at the law offices of Hogan and Hartson L.L.P., 555 - 13th Street, NW, Washington, D.C. 20004-1109 for the period commencing in or about May 1998 to in or about June 1998, in my capacity as a professional travel agent for Professional Travel Corporation. My office was located on the 7th floor at the aforementioned address. I traveled directly from my home in Maryland to Washington, D.C., and directly back to Maryland, in the performance of my duties. My co-workers during this period, who were also Professional Travel Corporation employees working on-site, were Debbie Hernandez and Lisa, whose last name I cannot recall. All of my duties during this time period were completely performed within the District of Columbia.

3. I worked on-site at the law offices of Hogan and Hartson L.L.P., 555 - 13th Street, NW, Washington, D.C. 20004-1109 several times in the Fall-Winter of 1998, and in the Winter-Spring of 1998-1999, in my capacity as a professional travel agent for Professional Travel Corporation. My office was located on the 7th floor at the aforementioned address. I traveled directly from my home in Maryland to Washington, D.C., and directly back to Maryland, in the performance of my duties. My co-workers during this period, who were also Professional Travel Corporation employees working on-site, were Debbie Hernandez, and Lisa and Tanya, whose last names I cannot recall. All of my duties on these occasions were completely performed within the District of Columbia.

4. I worked on-site at the law offices of Patton Boggs LLP, within the District of Columbia, one or more times in 1998 as a professional travel agent for Professional Travel

Corporation. My duties were completely performed within the District of Columbia on those occasions.

5. On or about July 26, 1998, I performed a non-sexual, professional massage upon Sarah K. Boswell, the Director of Operations at Professional Travel Corporation, pursuant to Ms. Boswell's specific request, at Ms. Boswell's home at 1860 3rd Street, NW, Washington, D.C. 20001. Upon completion of said massage therapy, Ms. Boswell invited me to lunch at the Velocity Grill in Washington, D.C. During that lunch, Ms. Boswell proceeded to discuss matters of my employment with me, including my future at Professional Travel Corporation, my leadership qualities and personality, and other employment-related matters.

6. Upon return to Ms. Boswell's residence on or about July 26, 1998, Ms. Boswell began to fondle, caress and touch my breasts and genitals, despite repeated request from me that she immediately stop. I stated at that time, "I can't do this, you're my boss." Ms. Boswell did not stop touching, fondling and kissing me, which ultimately resulted in acts of sex as between myself and Ms. Boswell, including cunnilingus and vaginal digital stimulation. Upon completion of these sex acts, I immediately left Ms. Boswell's residence without saying a word.

7. During the week after the sexual encounter which occurred on or about July 26, 1998, Sarah K. Boswell accosted, reprimanded and argued with me because she believed that I had revealed the extent and nature of our recent sexual encounter to a co-worker at PTC. She expressly forbid me from revealing this incident to anyone at PTC.

Appendix G

The discovery by any other PTC employees of the nature and extent of Ms. Boswell's acts of sexual harassment and discrimination upon me was a matter of great concern to her for the period commencing on or about July 26, 1998 through and including June 30, 1999. Ms. Boswell went to great lengths to cover up her acts of sexual harassment and discrimination.

8. During the period commencing on or about July 26, 1998, through and including June 30, 1999, I continually stated to Ms. Boswell that I did not want a sexual relationship, or other personal relationship, of any kind with her. During this same time period, I acquiesced in many of Ms. Boswell's demands for lunch dates, and other demands for social companionship at locations within the District of Columbia, as well as overnight camping, climbing and skiing trips, because Ms. Boswell indicated to me, explicitly and implicitly, in conversations she initiated from the District of Columbia and elsewhere, that I needed to do so to keep my job at PTC.

9. On or about February 20, 1999, Ms. Boswell invited me out to a bar and restaurant in Washington, D.C. to discuss several management-level positions at Professional Travel Corporation for which I had applied. Those positions included the on-site manager at Hogan and Hartson L.L.P., and the on-site manager at Skadden, Arps, Slate, Meagher & Flom, LLP, both of which were wholly located and to be performed in Washington, D.C. Ms. Boswell and I discussed my qualifications, abilities and chances of obtaining the aforementioned positions. Ms. Boswell invited me back to her residence because she believed I had too much to drink.

While at Ms. Boswell's home, she appeared before me clad in a negligee, and proceeded to get on top of me, then kissing, fondling, caressing and touching my breasts, genitals and person. I pushed Ms. Boswell off of me and immediately left her home.

10. During the period commencing on or about July 26, 1998 through and including June 30, 1999, Sarah K. Boswell continuously and repeatedly telephoned me at my home in Maryland from her home in the District of Columbia. I know this because I had a caller identification service on my telephone and was able to recognize her District of Columbia telephone number. I was compelled to answer these calls because my partner of nine (9) years was home and was not cognizant of Ms. Boswell's unwanted sexual advances upon and communications with me. Ms. Boswell telephoned me from her home 5 to 7 times during the work week, with many other calls on the weekends. One Saturday, Ms. Boswell called me 5 times. During the month of June, 1999, Ms. Boswell telephoned me 20-30 times. These telephone calls were usually between 8 and 11 p.m. during the workweek, and at all times of the day and into the evening on weekends.

11. Ms. Boswell's telephone calls originating in Washington, D.C., for the period commencing on or about July 26, 1998 through and including June 30, 1999, consisted of repeated, insistent demands that I engage in sexual acts with her, and that I accompany her socially to locations within the District of Columbia, and to other locations. Ms. Boswell also demanded in these telephone calls that I accompany her on overnight camping, climbing and skiing trips which she arranged.

12. Ms. Boswell stated in one such conversation from Washington, D.C. that "as long as there's an us, you'll have a job at PTC." Ms. Boswell made clear in many of the telephone conversations originating in Washington, D.C. that I needed to acquiesce to her demands in order to keep my job.

13. In several telephone conversations initiated by Ms. Boswell from her home in the District of Columbia, during the period commencing on or about July 26, 1998 through and including June 30, 1999, Ms. Boswell explicitly threatened my work schedule at PTC/Navigant by stating that she was going to require me to work a five (5) day work week, which she knew would necessitate my having to quit my job. In these conversations, Ms. Boswell explicitly utilized these threats to force her demands for sexual activity and social and other companionship upon me.

14. Ms. Boswell demanded that I come to her house for a brunch, Thanksgiving 1998, in a call originating from Washington, D.C. I told Ms. Boswell that I usually spent Thanksgiving with my family. She insisted, and I was forced to come to her house in the District of Columbia. After the brunch concluded, and I indicated a desire to return to my family's home, Ms. Boswell insisted that I return to her house thereafter.

15 During the period commencing on or about July 26, 1998 through and including June 30, 1999, and after the sexual incident described above as occurring on or about February 20, 1999, Sarah Boswell and I had a telephone conversation, initiated by Ms. Boswell from her home in the

District of Columbia, where we discussed Ms. Boswell's decision to deny my application for the on-site manager's position at the law offices of Hogan & Hartson L.L.P. in the District of Columbia. I vehemently protested the fact that Ms. Boswell had selected Thomas Moreland, an individual with less managerial experience than I, and who had been given a higher salary than I had been requesting for the same job.

16. In several telephone conversations initiated by Ms. Boswell in the District of Columbia, Ms. Boswell indicated to me that I was not "cooperating" with her. I informed her in those conversations that her idea of cooperation included acts of sex and social companionship, which I clearly informed her were unwanted and unwelcome. These conversations occurred in the time period commencing on or about February 20, 1999 through and including June 30, 1999. Several such conversations occurred before Ms. Boswell made the decision to deny my application for the on-site manager's positions at Hogan & Hartson L.L.P., and Skadden, Arps, Slate, Meagher, & Flom LLP, in the District of Columbia.

17. In several telephone conversations initiated by Ms. Boswell from her home in the District of Columbia, during the time period commencing on or about June 1998 through and including June 1999, Ms. Boswell stated to me that the reason that I was refusing her sexual advances and demands for sexual activity was because she believed I was having a sexual affair with Phyllis Reagan, a corporate Vice President for Professional Travel Corporation, who was also Ms. Boswell's boss. In another District of Columbia telephone

conversation sometime between December 1998 and February 20, 1999, Ms. Boswell stated that she did not want me to have any type of personal relationship with Phyllis Reagan, including drinks and/or meals after work, or any type of socialization. I complied with that demand as best as I was able.

18. Ms. Boswell continuously and insistently questioned me, in telephone calls initiated by her in the District of Columbia, regarding my relationship with Phyllis Reagan during the time period commencing on or about July 26, 1998 through and including June 30, 1999. Ms. Boswell derisively referred to Phyllis Reagan in these calls as "Sergeant Bitch."

19. During the period commencing on or about July 26, 1998 through and including June 30, 1999, Ms. Boswell demanded, in telephone conversations initiated by her in the District of Columbia, that I accompany her on to various locations within the District of Columbia. I acquiesced in many such demands because Ms. Boswell had explicitly stated, and implicitly inferred, that I needed to do so to keep my job at Professional Travel Corporation.

20. I accompanied Ms. Boswell, pursuant to her demand, to the following locations within the District of Columbia: Velocity Grill; Wizards basketball game at the MCI Arena; bar and restaurant in Union Station; an Italian Restaurant on New York Avenue, NW, near the police station; other restaurants and places located within the District of Columbia. On several occasions, Ms. Boswell and I had lunch within the District of Columbia during the work week, at which times she demanded that I engage in sexual relations with her, and otherwise engaged in unwanted touching of my person.

Appendix G

21. During the occasions in the District of Columbia referenced in paragraph 20, Ms. Boswell would engage in unwanted touching, feeling, and caressing of my breasts and the kissing of my face and neck, including the following acts: holding my hand in the car and in public places; putting her arm around my waist and shoulders; kissing my face and neck; touching my breasts in the car. I repeatedly reiterated to Ms. Boswell my desire that she stop said uninvited acts of touching, feeling, caressing and kissing, but she would not listen to me and persisted in these acts.

22. Ms. Boswell initiated many telephone conversations to me of a personal nature from her car phone within the District of Columbia. These conversations included demands for social companionship.

23. The intensity and number of telephone calls initiated by Ms. Boswell from Washington, D.C. to me at my home underwent a marked increase in June of 1999. Ms. Boswell demanded that I accompany her on a climbing trip to Columbia, Maryland scheduled for June 22, 1999, or thereabouts, and also demanded that I accompany her on an overnight camping trip planned for the July 4, 1999 weekend. I adamantly refused to capitulate to her demands, and argued with her in these phone conversations.

24. During the course of the phone conversations commencing on or about July 26, 1998 through and including June 30, 1999, initiated by Ms. Boswell in the District of Columbia, and specifically during the acts on or about February 20, 1999, Ms. Boswell threatened to inform my partner of nine (9) years of the past sexual and other intimate

relations between Ms. Boswell and I. In these conversations, Ms. Boswell explicitly utilized these threats to force her demands for sexual activity and social and other companionship upon me.

s/ Tomsene Blake
TOMSENE BLAKE

Subscribed and sworn to before me this 7th day of September, 1999.

s/ Mary P. Walls
Notary Public, D.C.
My commission expires: 3/14/2001

APPENDIX H — AFFIDAVIT OF THOMAS MORELAND DATED SEPTEMBER 3, 1999

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

Civil Action No.: 99-CA-005195
Judge Susan R. Winfield
Calendar No. 13
Next Event: Initial Conf.
October 22, 1999

TOMSENE BLAKE,

— Plaintiff,

v.

PROFESSIONAL TRAVEL CORP, d/b/a PROFESSIONAL TRAVEL, NAVIGANT INTERNATIONAL, E704.T

Defendants.

AFFIDAVIT OF THOMAS MORELAND

District of Columbia, SS:

THOMAS MORELAND, being first duly sworn, states that:

1. I am over twenty-one (21) years of age, of sound mind and make the following statements based upon my personal knowledge.

Appendix H

2. I was employed as an agent/manager for Professional Travel Corporation, Professional Travel Corporation d/b/a Professional Travel, Navigant International and Navigant, International, Inc. for the period September 14, 1998 to May 7, 1999.

3. In 1999, I obtained the on-site manager's position at Hogan & Hartson, L.L.P., 555 - 13th Street, NW, 7th Floor, Washington, D.C. 20004-1109, in my capacity as an employee of Professional Travel Corporation.

4. My job duties at Hogan & Hartson, L.L.P. were as follows: managing and directing the entire on-site travel office for PTC and Navigant.

5. The job duties set forth in paragraph five (5) above were wholly and completely performed within the District of Columbia at the offices of Hogan & Hartson, L.L.P.

6. I commuted directly from my home to Hogan & Hartson, L.L.P.'s offices within the District of Columbia in the performance of my job duties.

7. I would seldom visit the offices of Professional Travel Corporation in Arlington, Virginia because my job duties were performed in the District of Columbia.

s/ Thomas Moreland
THOMAS MORELAND

Appendix H

Subscribed and sworn to before me this 3rd day of September, 1999.

s/ Mary P. Walls
Notary Public, D.C.
[stamp]
MARY P WALLS
NOTARY PUBLIC, D.C.
MY COMMISSION EXPIRES
MARCH 14, 2001